



County of Los Angeles  
**CHIEF ADMINISTRATIVE OFFICE**

713 KENNETH HAHN HALL OF ADMINISTRATION • LOS ANGELES, CALIFORNIA 90012  
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DAVID E. JANSSEN  
Chief Administrative Officer

Board of Supervisors  
GLORIA MOLINA  
First District

YVONNE B. BURKE  
Second District

ZEV YAROSLAVSKY  
Third District

DON KNABE  
Fourth District

MICHAEL D. ANTONOVICH  
Fifth District

October 26, 2004

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, CA 90012

Dear Supervisors:

**TAX DEFERRED STATUS FOR EMPLOYEE TERMINATION PAY  
(3 VOTES)**

**IT IS RECOMMENDED THAT YOUR BOARD:**

1. Approve the accompanying resolution and ordinances allowing employee termination pay to be contributed on a pre-tax basis to a qualified tax deferred plan(s) on behalf of employees who voluntarily sign an irrevocable agreement providing for such contributions. These contributions will be designated as employer contributions and will be in lieu of payments that would otherwise be made to the affected employees as taxable termination pay.
2. Instruct the County Counsel, in conjunction with the Chief Administrative Officer and Auditor-Controller, to prepare the necessary irrevocable employee agreements relating to pre-tax termination pay contributions.
3. Instruct the County Counsel to prepare the necessary contract amendment with Great-West Retirement Services for plan administration services and the necessary trust agreement with Wells Fargo Bank, N.A. for plan trustee services; and instruct the Chairman to sign such contracts.
4. Instruct the Auditor-Controller to make the necessary payroll system changes.

**PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

The 2003-06 Fringe Benefit Memoranda of Understanding with the Coalition of County Unions, AFL-CIO and SEIU, Local 660, AFL-CIO provide for the establishment of a tax deferred plan for employee termination pay by no later than July 1, 2005. "Employee termination pay" for this purpose includes unused accumulated vacation time, sick leave, holiday time, and other accrued time payable to an employee upon separation from County service. The purpose of these recommendations is to implement the agreed upon program by establishing a separate "Termination Pay Plan" for represented employees under authority of Section 401(a) of the Internal Revenue Code and by extending similar changes to non-represented employees through amending the existing Savings Plan established under authority of Section 401(k) of the Internal Revenue Code. We have discussed these recommendations with the Coalition of County Unions and Local 660 and both groups are in full agreement with them.

Under the proposed Termination Pay Plan and amended 401(k) Savings Plan, a participating employee must voluntarily enter into a one-time irrevocable agreement that authorizes the County to contribute (or "pick up" in the language of the Internal Revenue Code) a specified portion of his or her termination pay into a qualified tax deferred plan in lieu of receiving such pay as taxable cash. The agreement must be completed at least 90 days prior to the employee's last day of County service unless the termination is due to death or layoff or other circumstances beyond the control of the employee. Upon termination, the pick up contribution would be deposited on the employee's behalf into either the Termination Pay Plan or the amended Savings Plan, as applicable, in exchange for an offsetting reduction in the taxable termination pay otherwise payable to the employee at that point.

The amount that may be contributed to the proposed plans is currently subject to a \$41,000 annual limit provided for in Section 415(c) of the Internal Revenue Code. This is an indexed limit that will grow in the future in accordance with the cost of living as determined by the Internal Revenue Service. In the case of the 401(k) Savings Plan, any other contributions paid into the plan by or on behalf of the employee in the same calendar year must be applied toward this limit and would, therefore, reduce the amount of termination pay that may be contributed to the plan.

On February 10, 2004, your Board approved a resolution permitting employees to use termination pay on a tax deferred basis to purchase Additional Retirement Credit ("ARC") through the Los Angeles County Employees Retirement Association pursuant to the provisions of Assembly Bill 55 adopted last year by your Board. The resolution shown in Attachment I restates and amends the February 10, 2004 resolution, as appropriate, to

permit the use of termination pay on a tax deferred basis for either the purchase of ARC, or deposit into the proposed Termination Pay Plan or amended 401(k) Savings Plan, or both. Employees will also have the option to receive part or all of their termination pay in the form of taxable cash and will, in fact, be required to receive it in that form to the extent it is not used for ARC or it exceeds the aforementioned Section 415(c) limit.

The ordinances establishing the Termination Pay Plan and amending the 401(k) Savings Plan are shown in Attachment II & III. The 401(k) Savings Plan amendment also includes a minor technical change pertaining to the distribution of small account balances upon an employee's termination from County service. This change would provide the Savings Plan Administrative Committee flexibility regarding the method and manner of conforming with Internal Revenue Service regulations regarding the distributions of small account balances under \$5,000.

#### **IMPLEMENTATION OF STRATEGIC PLAN GOALS**

The actions recommended in this letter promote workforce excellence by resolving workplace issues while maintaining financial responsibility.

#### **FISCAL IMPACT/FINANCING**

There are no County costs directly attributable to the contributions to the Termination Pay Plan or the amended 401(k) Savings Plan as the cost of these contributions would be paid by the participating employees through offsetting reductions in the taxable termination pay otherwise payable to them. Neither would there be County costs associated with the ongoing administration of these plans as all such costs would be borne by the participants through participant fees. There would, however, be initial communications and systems set-up costs payable to Great-West Retirement Services estimated at \$54,000 and \$10,000, respectively.

#### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

County Counsel has reviewed the pertinent Federal law and available Internal Revenue Service guidance with regard to termination pay plans and has determined that the proposed program meets the requirements of the law, but that it would be appropriate to obtain a private letter ruling from the Internal Revenue Service confirming this conclusion. The County Counsel will, therefore, request the private letter ruling and favorable determination letters confirming the "qualified" status of the Termination Pay Plan and the amended 401(k) Savings Plan.

Pending a response from the Internal Revenue Service, each employee wishing to participate in the Termination Pay Plan or the termination pay component of the amended 401(k) Savings Plan will be advised that a final Internal Revenue Service ruling has not been received. In each instance, the employees will be required to sign a release of liability indicating they understand that the Internal Revenue Service has not yet ruled on the County's program and, in the unlikely event an unfavorable ruling is received, the tax deferred status of the termination pay contribution may be disqualified. In that event, the employee may be required to pay taxes on the contribution in question. The release of liability form and irrevocable employee agreement regarding pre-tax termination pay contribution will be substantially similar to the documents shown in Attachments IV and V for the Termination Pay Plan and amended 401 (k) Savings Plan, respectfully.

Great-West Retirement Services and Wells Fargo Bank, N.A. are currently the third-party administrator and trustee, respectively, for the existing deferred compensation plan (i.e. the Horizons Plan) and the 401(k) Savings Plan. We are recommending that these organizations provide the same services for the new Termination Pay Plan and the amended 401(k) Savings Plan and that the current contracts with each be amended accordingly. Great-West Retirement Services has agreed to provide the needed services for a one-time set-up fee of \$9,000 for the Termination Pay Plan and \$1,000 for the 401(k) Savings Plan. They would also prepare and mail an initial written communication piece regarding the program for a one-time fee of \$54,000. These costs would be paid by the County.

In the case of the Termination Pay Plan, Great-West Retirement Services would also charge each participant an administrative fee of \$3.00 per month for each month a participant's assets remain in the plan, plus a one-time \$65.00 fee at the time a participant exits the plan. The \$65.00 exit fee would be waived in any case where the participant remains in the plan for at least 36 months. The agreement with Great-West Retirement Services may be re-opened and the fees may be adjusted by mutual agreement if actual expenses do not support these charges. In the case of the amended 401(k) Savings Plan, Great-West Retirement Services would charge a flat annual administrative fee of \$6,600 to be spread evenly to the approximate 10,000 participants in the plan. There will be no additional fees for the Wells Fargo Bank, N.A. trustee services other than incidental banking fees to be borne by the participants. These fees are estimated at less than \$2,000 per year.

County Counsel will prepare for the Chairman's signature the necessary contract amendments with Great-West Retirement Services and Wells Fargo Bank. The Auditor-Controller, Great-West Retirement Services, Los Angeles County Employees Retirement Association, and departmental personnel will be working together to administer the irrevocable employee agreement for termination pay.

Honorable Board of Supervisors  
October 26, 2004  
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The accompanying resolution and ordinances have been approved as to form by the County Counsel.

Respectfully submitted,

A handwritten signature in black ink, reading "David E. Janssen", with a long horizontal flourish extending to the right.

DAVID E. JANSSEN  
Chief Administrative Officer

DEJ:SRH  
WGL:DT:df

Attachments (5)

c: Auditor-Controller  
County Counsel  
Chief Executive Officer, Los Angeles County Employees Retirement Association

RESOLUTION

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**RESOLUTION OF THE BOARD OF SUPERVISORS  
OF THE COUNTY OF LOS ANGELES  
ALLOWING EMPLOYEE TERMINATION PAY TO BE CONTRIBUTED  
ON A PRE-TAX BASIS TO QUALIFIED TAX DEFERRED PLANS**

**WHEREAS**, Section 414(h)(2) of the Internal Revenue Code ("IRC") permits employee contributions to a governmental qualified plan to be "picked up" by the employer --i.e., although designated under the plan as employee contributions, the contributions are (i) paid by the employer in lieu of the contributions that otherwise would be made by the employee pursuant to a one-time, binding and irrevocable election which precludes the employee from receiving the contributed amounts directly in cash and, (ii) are thus excluded from the gross income of the employee;

**WHEREAS**, upon termination of employment, County employees may receive cash as leaving vacation or in redemption of unused accumulated vacation, sick leave, annual leave, overtime, holiday time, and other accumulated benefits, as provided under the Los Angeles County Code ("Termination Pay");

**WHEREAS**, effective February 1, 2004, the Board of Supervisors adopted Sections 31485.7 and 31658 of the Government Code authorizing active members of retirement systems in Los Angeles County subject to the County Employees Retirement Law of 1937 to receive up to five (5) years of service credit for additional retirement credit ("ARC") by making a lump sum payment or by making installment payments over a period of up to ten (10) years, subject to specified statutory conditions, to pay the full cost of ARC to the retirement system; and

**WHEREAS**, in accordance with IRC Section 414(h)(2), and Section 31581.2 of the Government Code, the Board of Supervisors previously resolved on February 10, 2004, to adopt a program under which the County may "pick up" some or all of a member's Termination Pay and contribute those amounts toward the purchase of ARC under a contract with the Los Angeles County Employees Retirement Association ("LACERA");

**WHEREAS**, the County agreed with employee representatives that it would adopt a plan to which employees could contribute Termination Pay on a pre-tax basis; and

**WHEREAS**, the County now wishes to: (1) enhance retirement benefits by (a) amending the County of Los Angeles Savings Plan ("Savings Plan"), and (b) adopting the County of Los Angeles Termination Pay Pick-Up Plan ("Termination Pay Plan") for employees not eligible to participate in the Savings Plan, to permit eligible employees to elect to have a specified percentage or dollar amount of Termination Pay picked up and contributed to the applicable Plan; and (2) amend and restate its prior resolution on February 10, 2004 regarding the pick up of Termination Pay to purchase ARC, in order to reflect necessary coordination with the Termination Pay Plan or Savings Plan (as applicable) and as well as uniform administrative rules and terminology for all pick up programs involving Termination Pay;

**NOW THEREFORE, BE IT RESOLVED** that a retiring or terminating employee is permitted to make an irrevocable election not to receive Termination Pay in cash and in lieu thereof to have the Board of Supervisors pick up and contribute all or a designated portion of the employee's Termination Pay towards ARC, as authorized pursuant to Sections 31485.7 and 31658 of the Government Code, the Termination Pay Plan or the Savings Plan (as applicable), all as provided herein:

(a) The employee must elect, by executing a one-time, binding and irrevocable Payroll Deduction Authorization Agreement for "Pick-Up" and Contribution of Cashed-Out Time Certificates (the "Pick Up Election") to have all or a designated portion of his or her Termination Pay contributed to the Plan as a pick up under IRC Section 414(h)(2). Once executed, the Pick Up Election may not be amended or revoked. An employee who executes a Pick Up Election shall thereafter have no option to receive in cash, or otherwise direct the disposition of, the fixed percentage or dollar amount of Termination Pay that the employee elected to contribute towards ARC, the Termination Pay Plan or the Savings Plan (as applicable); and

(b) After execution of the Pick Up Election toward ARC, LACERA will not accept direct payments from the employee to purchase the ARC covered by the Pick Up Election; provided, however, that the employee may, at the same time he or she executes the Pick Up Election, also execute an agreement to have amounts deducted from salary, picked up and contributed to purchase ARC during employment with the County; and

(c) The amount of Termination Pay picked up for contribution to ARC, the Termination Pay Plan, and/or the Savings Plan, cumulatively may not exceed 100% of Termination Pay. Furthermore, the amount of Termination Pay picked up toward ARC may not exceed the outstanding balance owed under the ARC contract. If the outstanding balance owed on the ARC contract is less than the amount designated in the Pick Up Election, only an amount equal to the outstanding balance owed under the ARC contract will be deducted from Termination Pay, picked up and contributed to LACERA. Additionally, if the outstanding balance under the ARC contract at the time of



termination or retirement exceeds the lesser of 100% of Termination Pay or the dollar amount designated in the Pick Up Election, the employee is solely responsible for paying the additional cost from other sources; and

(d) Except as otherwise provided herein, the Pick Up Election must be executed at least 90 days before the employee's termination from employment. The Pick Up Election generally is effective upon execution; provided, however, that the Pick Up Election does not apply to any Termination Pay that becomes payable if an employee terminates employment or retires less than 90 days after the Pick Up Election is executed, unless the employee terminates employment with the County due to death, disability, layoff or other events that the County determines are beyond the control of the employee; and

(e) Notwithstanding the foregoing, in accordance with the February 10, 2004 Board decision regarding the pick up of ARC, for any employee who retired or terminated prior to June 1, 2004, the Pick Up Election was required to be executed at least 30 days before the employee's retirement or termination from employment (whichever was earlier). This special 30-day period was adopted to accommodate, on a one-time only basis, those employees retiring or terminating on or before March 31, 2004, and to provide a transition period following adoption of Sections 31485.7 and 31658 of the Government Code, effective February 1, 2004; and

(f) If the employee terminates employment or retires later than originally designated, the Pick Up Election will remain effective upon his or her actual termination or retirement; and

(g) If the employee is rehired after termination or retirement, any Termination Pay that has been picked up and contributed toward ARC, the Termination Pay Plan, or the Savings Plan shall not be refunded and any cashed-out accrued benefits attributable thereto shall not be restored; and

(h) Each County employee shall be eligible to make only one election to have Termination Pay picked up within the meaning of Code Section 414(h)(2). Accordingly, if an employee intends to have a portion of his or her Termination Pay picked up and contributed to the Termination Pay Plan or Savings Plan and a portion of his or her Termination Pay picked up and contributed to purchase ARC, the Member must execute a Pick Up Election that reflects how the Termination Pay will be allocated between the Termination Pay Plan/Savings Plan and ARC. Termination Pay will be picked up and contributed: (1) first, to purchase ARC in accordance with the Pick Up Election; and (2) second, to the Termination Pay Plan or Savings Plan, as applicable, in accordance with the Pick Up Election; and

(i) The employee contributions of Termination Pay toward ARC, the Termination Pay Plan, and/or the Savings Plan although designated as employee contributions, will be paid by the County in lieu of contributions by the employee; and

(j) The contribution of Termination Pay must be paid to the applicable plan within a reasonable period after the employee's termination from employment, not to exceed thirty (30) days; and

(k) The Pick Up Election shall be executed by the employee and shall state its effective date. Additionally, it shall provide that the employee authorizes the appropriate deduction from Termination Pay for the purposes of having it picked up by the County and paid directly to LACERA, the Termination Pay Plan, and/or the Savings Plan (as applicable), and that the employee understands and acknowledges the requirements and limitations set forth in this resolution. The Pick Up Election shall be in a form substantially similar to that attached in Appendix A and B to this Resolution; and

**BE IT FURTHER RESOLVED** that as provided in Section 31581.2 of the Government Code, this resolution shall not create any vested rights in any member under LACERA, nor shall it create any vested rights in any participant in the Savings Plan or the Termination Pay Plan, and the Board of Supervisors may amend or repeal this resolution at any time; and

**BE IT FURTHER RESOLVED** that, as a condition to entering the Pick Up Election, the County may require an employee to execute a release from liability for any adverse consequences that may result if the Internal Revenue Service or a court determines that a contribution under a Pick Up Election is not a picked up contribution within the meaning of IRC Section 414(h)(2) or that the Termination Pay Plan or Savings Plan (as amended), whichever is applicable, is not qualified under IRC Section 401(a); and

**BE IT FURTHER RESOLVED**, that this resolution shall take effect immediately upon its passage.

**I DO HEREBY CERTIFY** that at a regular meeting of the Board of Supervisors of the County of Los Angeles on the \_\_\_\_ day of \_\_\_\_\_, 2004, the foregoing Resolution was adopted.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the seal of the Board of Supervisors of the County of Los Angeles this \_\_\_\_ day of \_\_\_\_\_, 2004.

The foregoing resolution was on  
the \_\_\_\_ day of \_\_\_\_\_, 2004  
adopted by the Board of Supervisors of the County  
of Los Angeles and ex officio the governing body  
of all other special assessment and taxing districts,  
agencies and authorities for which said Board so acts.

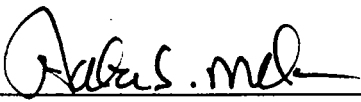
VIOLET VARONA-LUKENS  
Executive Officer-Clerk of the  
Board of Supervisors of the  
County of Los Angeles

By: \_\_\_\_\_

Deputy

APPROVED AS TO FORM:

OFFICE OF THE COUNTY COUNSEL

By:   
HALVOR S. MELOM  
Principal Deputy County Counsel

ARC/TPP CONTRACT & RELEASE

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**PAYROLL DEDUCTION AUTHORIZATION AGREEMENT FOR "PICK-UP" AND  
CONTRIBUTION OF CASHED-OUT TIME CERTIFICATES -- KNOWN AS  
"TERMINATION PAY"**

By filling out and signing this Payroll Deduction Authorization Agreement ("Agreement"), I, \_\_\_\_\_, irrevocably agree to have the County of Los Angeles ("County") contribute amounts of "Termination Pay" to one or both of the following plans as elected below: (1) the Los Angeles County Employees' Retirement Association ("LACERA") for the purchase of Additional Retirement Credit ("ARC"), and/or (2) the Termination Pay Pick-Up Plan (collectively called the "Plan(s)"). "Termination Pay" means amounts that would otherwise be received in cash by me upon termination of employment as leaving vacation or in redemption of unused accumulated vacation, sick leave, annual leave, overtime, holiday time, and other accumulated benefits, as provided under the Los Angeles County Code.

Specifically, I irrevocably authorize the County to deduct the following amounts from my Termination Pay and contribute those amounts to the following Plan(s):

**Termination Pay Contribution Election.**

Generally, you may elect to contribute either dollar amounts or percentages (in whole numbers) of Termination Pay to either or both of the Plans. If you are making LACERA contributions, you may instead make an election to contribute the amount necessary to complete your ARC contract, and then elect to have a percentage of what is left contributed to the Termination Pay Pick-Up Plan. Total contributions cannot be more than 100% of your Termination Pay or applicable limits under the Internal Revenue Code.

	\$ Amount	or Percentage	or ARC Contract Balance
<b>LACERA -- To purchase ARC in accordance with an agreement entered with LACERA under Section 31485.7 of the California Government Code</b>	\$ _____	____%	____(check here) remaining balance on ARC contract upon termination from employment
<b>Termination Pay Pick-Up Plan</b>	\$ _____	____%	____% of remaining balance after contribution to LACERA
<b>Cash</b>	<b>REMAINING BALANCE</b>		

If the amount elected above to purchase ARC with LACERA is more than the amount due on the ARC contract, only the amount owed will be deducted from Termination Pay and contributed to LACERA. If the amount owed on the ARC contract is more than the amount elected above for the purchase of ARC (or 100% of Termination Pay, if less), I understand that I will be solely responsible for paying the additional cost of the ARC contract from other sources.

The contributions to the Plan(s) elected above are intended to be "picked up" contributions that are treated as employer contributions not subject to income tax under

Internal Revenue Code ("Code") section 414(h)(2), and thus, the County will designate them as employer contributions for tax purposes.

I understand that I can make only one election to have Termination Pay "picked up" within the meaning of Code section 414(h)(2). **After signing this Agreement, I cannot enter another agreement to have Termination Pay picked up and contributed to the Plan(s) or another retirement plan. Additionally, if I want to purchase ARC by a combination of picked-up salary deductions and picked-up Termination Pay, I understand that I must make a salary deduction pick-up election at the same time that I sign this Agreement.**

Termination Pay will be "picked up" and contributed: (1) first, to LACERA toward the purchase of ARC in accordance with the amount elected above, if any; and (2) second, to the Termination Pay Pick-Up Plan in accordance with the amount elected above, if any. The contribution to the Termination Pay Pick-Up Plan will not be more than the amount of Termination Pay left over after amounts are deducted to make required contributions to LACERA. After the contributions to the Plan(s) are made, I will receive any remaining Termination Pay in cash, subject to applicable taxes and tax withholding.

I represent that this Agreement is executed at least 90 days prior to the date I will end my County employment: \_\_\_\_\_, 20\_\_\_\_. The "pick-up" election is effective immediately. However, this Agreement will not apply to any Termination Pay that becomes payable if I end County employment less than 90 days after signing this Agreement, unless my employment unexpectedly ends due to death, disability, layoff or other involuntary termination that the County determines is beyond my control ("Involuntary Early Severance"). I understand and agree that, if I end my employment less than 90 days after I sign this Agreement for reasons other than an Involuntary Early Severance, this Agreement is void and my Termination Pay will not be "picked up" and contributed to the Plan(s) as elected above, but instead will be paid as cash, subject to applicable taxes and tax withholding.

I understand and agree that this Agreement cannot be revoked or changed after it is signed. I may no longer elect to receive in cash, or otherwise direct the use of, the amount of Termination Pay that I elect to be contributed to the Plan(s) under this Agreement. The Plan(s) will not accept contributions from any source other than Termination Pay to satisfy the contribution elections made in this Agreement. If I would otherwise have the right to change the method of purchasing the ARC covered by this Agreement (for example, the right to change from a lump sum to installment payments), I waive that right.

This Agreement will be effective only if I also execute a Release furnished by the County in connection with this Agreement.

PARTICIPANT                      Employee ID: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

REPRESENTATIVE  
(Great-West/LACERA): \_\_\_\_\_

**RELEASE**

**IN CONNECTION WITH**

**PAYROLL DEDUCTION AUTHORIZATION AGREEMENT FOR "PICK-UP" AND  
CONTRIBUTION OF "TERMINATION PAY" TO THE LOS ANGELES COUNTY EMPLOYEE  
RETIREMENT ASSOCIATION ("LACERA") AND TERMINATION PAY PICK-UP PLAN  
("PICK-UP PLAN")**

I understand that, although the contributions authorized by the attached Payroll Deduction Authorization Agreement (the "Agreement"), are intended to qualify as a "picked up" contributions not subject to income tax under Internal Revenue Code ("IRC") Section 414(h)(2), the County has not yet received a ruling from the Internal Revenue Service ("IRS") on this issue. The County intends to seek a private letter ruling from the IRS in the future that the contributions made under the Agreement to the Pick-Up Plan and/or LACERA qualify as "picked-up" contributions under IRC Section 414(h)(2). I understand that, although the IRS has issued favorable private letter rulings to other taxpayers based on similar programs, these rulings are not binding and the IRS may conclude that the contributions authorized by the Agreement do not qualify as "picked-up" contributions.

I also understand that, although the Pick-Up Plan is intended to be qualified under IRC Section 401(a), the IRS has not yet ruled on the Pick-Up Plan's qualified status. The County plans to seek a favorable determination from the IRS on the qualified status of the Pick-Up Plan.

I understand and agree that, if the IRS concludes that any contributions covered by the Agreement are not "picked up" contributions, or that the Termination Pay Pick-Up Plan is not initially qualified under IRC Section 401(a), the contributions under the Agreement: (1) may be subject to income tax as well as interest and penalties thereon; (2) may be subject to excise taxes if I rolled over those contributions to an individual retirement account or annuity; and (3) may need to be refunded to me from the Pick-Up Plan and/or LACERA (or another plan into which I rolled over my contributions). With regard to any Additional Retirement Credit I have purchased, if my contribution needs to be refunded to me, I understand that such refund may result in a recalculation and reduction of my retirement allowance payable from LACERA.

I understand that neither this Release nor the Agreement constitute tax advice and acknowledge that I am on notice that I should consider obtaining my own legal and/or tax advice before executing either the Release or Agreement.

By executing this Release, I acknowledge that I have read and understand the foregoing, and, as a condition of the County entering the Agreement with me, I agree to release the County from liability for any losses, costs, expenses, penalties or payments incurred by me as a result of any of the potential adverse consequences described in this Release or that may otherwise result from a determination by the IRS or a court that the contributions made pursuant to the Agreement are not "picked-up" contributions under IRC Section 414(h)(2), or that the Termination Pay Pick-Up Plan is not initially qualified under IRC Section 401(a).

**PARTICIPANT**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

ATTACHMENT V

ARC/SAVINGS PLAN CONTRACT AND RELEASE

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**PAYROLL DEDUCTION AUTHORIZATION AGREEMENT FOR "PICK-UP" AND  
CONTRIBUTION OF CASHED-OUT TIME CERTIFICATES -- KNOWN AS  
"TERMINATION PAY"**

By filling out and signing this Payroll Deduction Authorization Agreement ("Agreement"), I, \_\_\_\_\_, irrevocably agree to have the County of Los Angeles ("County") contribute amounts of "Termination Pay" to one or both of the following plans as elected below: (1) the Los Angeles County Employees' Retirement Association ("LACERA") for the purchase of Additional Retirement Credit ("ARC"), and/or (2) the Savings Plan (collectively called the "Plan(s)"). "Termination Pay" means amounts that would otherwise be received in cash by me upon termination of employment as leaving vacation or in redemption of unused accumulated vacation, sick leave, annual leave, overtime, holiday time, and other accumulated benefits, as provided under the Los Angeles County Code.

Specifically, I irrevocably authorize the County to deduct the following amounts from my Termination Pay and contribute those amounts to the following Plan(s):

**Termination Pay Contribution Election.**

Generally, you may elect to contribute either dollar amounts or percentages (in whole numbers) of Termination Pay to either or both of the Plans. If you are making LACERA contributions, you may instead make an election to contribute the amount necessary to complete your ARC contract, and then elect to have a percentage of what is left contributed to the Savings Plan. Total contributions cannot be more than 100% of your Termination Pay or applicable limits under the Internal Revenue Code.

	\$ Amount	or Percentage	or ARC Contract Balance
<b>LACERA</b> -- To purchase ARC in accordance with an agreement entered with LACERA under Section 31485.7 of the California Government Code	\$ _____	____%	____ (check here) remaining balance on ARC contract upon termination from employment
<b>Savings Plan</b>	\$ _____	____%	____% of remaining balance after contribution to LACERA
<b>Cash</b>	<b>REMAINING BALANCE</b>		

If the amount elected above to purchase ARC with LACERA is more than the amount due on the ARC contract, only the amount owed will be deducted from Termination Pay and contributed to LACERA. If the amount owed on the ARC contract is more than the amount elected above for the purchase of ARC (or 100% of Termination Pay, if less), I understand that I will be solely responsible for paying the additional cost of the ARC contract from other sources.

The contributions to the Plan(s) elected above are intended to be "picked up" contributions that are treated as employer contributions not subject to income tax under

Internal Revenue Code ("Code") section 414(h)(2), and thus, the County will designate them as employer contributions for tax purposes.

I understand that I can make only one election to have Termination Pay "picked up" within the meaning of Code section 414(h)(2). **After signing this Agreement, I cannot enter another agreement to have Termination Pay picked up and contributed to the Plan(s) or another retirement plan. Additionally, if I want to purchase ARC by a combination of picked-up salary deductions and picked-up Termination Pay, I understand that I must make a salary deduction pick-up election at the same time that I sign this Agreement.**

Termination Pay will be "picked up" and contributed: (1) first, to LACERA toward the purchase of ARC in accordance with the amount elected above, if any; and (2) second, to the Savings Plan in accordance with the amount elected above, if any. The contribution to the Savings Plan will not be more than the amount of Termination Pay left over after amounts are deducted to make required contributions to LACERA. After the contributions to the Plan(s) are made, I will receive any remaining Termination Pay in cash, subject to applicable taxes and tax withholding.

I represent that this Agreement is executed at least 90 days prior to the date I will end my County employment: \_\_\_\_\_, 20\_\_\_\_. The "pick-up" election is effective immediately. However, this Agreement will not apply to any Termination Pay that becomes payable if I end County employment less than 90 days after signing this Agreement, unless my employment unexpectedly ends due to death, disability, layoff or other involuntary termination that the County determines is beyond my control ("Involuntary Early Severance"). I understand and agree that, if I end my employment less than 90 days after I sign this Agreement for reasons other than an Involuntary Early Severance, this Agreement is void and my Termination Pay will not be "picked up" and contributed to the Plan(s) as elected above, but instead will be paid as cash, subject to applicable taxes and tax withholding.

I understand and agree that this Agreement cannot be revoked or changed after it is signed. I may no longer elect to receive in cash, or otherwise direct the use of, the amount of Termination Pay that I elect to be contributed to the Plan(s) under this Agreement. The Plan(s) will not accept contributions from any source other than Termination Pay to satisfy the contribution elections made in this Agreement. If I would otherwise have the right to change the method of purchasing the ARC covered by this Agreement (for example, the right to change from a lump sum to installment payments), I waive that right.

This Agreement will be effective only if I also execute a Release furnished by the County in connection with this Agreement.

PARTICIPANT                      Employee ID: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

REPRESENTATIVE  
(Great-West/LACERA): \_\_\_\_\_

**RELEASE**

**IN CONNECTION WITH**

**PAYROLL DEDUCTION AUTHORIZATION AGREEMENT FOR "PICK-UP" AND  
CONTRIBUTION OF "TERMINATION PAY" TO THE LOS ANGELES COUNTY EMPLOYEE  
RETIREMENT ASSOCIATION ("LACERA") AND SAVINGS PLAN**

I understand that, although the contributions authorized by the attached Payroll Deduction Authorization Agreement (the "Agreement"), are intended to qualify as a "picked up" contributions not subject to income tax under Internal Revenue Code ("IRC") Section 414(h)(2), the County has not yet received a ruling from the Internal Revenue Service ("IRS") on this issue. The County intends to seek a private letter ruling from the IRS in the future that the contributions made under the Agreement to the Savings Plan and/or LACERA qualify as "picked-up" contributions under IRC Section 414(h)(2). I understand that, although the IRS has issued favorable private letter rulings to other taxpayers based on similar programs, these rulings are not binding and the IRS may conclude that the contributions authorized by the Agreement do not qualify as "picked-up" contributions.

I also understand that, although the Savings Plan is intended to be qualified under IRC Section 401(a), the IRS has not yet ruled on the Savings Plan's qualified status following its amendment to permit picked up contributions. The County plans to seek a favorable determination from the IRS on the qualified status of the Savings Plan.

I understand and agree that, if the IRS concludes that any contributions covered by the Agreement are not "picked up" contributions, or that the Savings Plan is not initially qualified under IRC Section 401(a), the contributions under the Agreement: (1) may be subject to income tax as well as interest and penalties thereon; (2) may be subject to excise taxes if I rolled over those contributions to an individual retirement account or annuity; and (3) may need to be refunded to me from the Savings Plan and/or LACERA (or another plan into which I rolled over my contributions). With regard to any Additional Retirement Credit I have purchased, if my contribution needs to be refunded to me, I understand that such refund may result in a recalculation and reduction of my retirement allowance payable from LACERA.

I understand that neither this Release nor the Agreement constitute tax advice and acknowledge that I am on notice that I should consider obtaining my own legal and/or tax advice before executing either the Release or Agreement.

By executing this Release, I acknowledge that I have read and understand the foregoing, and, as a condition of the County entering the Agreement with me, I agree to release the County from liability for any losses, costs, expenses, penalties or payments incurred by me as a result of any of the potential adverse consequences described in this Release or that may otherwise result from a determination by the IRS or a court that the contributions made pursuant to the Agreement are not "picked-up" contributions under IRC Section 414(h)(2), or that the Savings Plan is not initially qualified under IRC Section 401(a).

**PARTICIPANT**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHMENT II**

**TERMINATION PAY PICK UP PLAN**

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## ANALYSIS

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This ordinance amends Title 5 – Personnel, of the Los Angeles County Code, relating to employee termination pay to be contributed on a pre-tax basis to qualified tax deferred plans by adding Chapter 5.18.

OFFICE OF THE COUNTY COUNSEL

By   
HALVOR S. MELOM  
Principal Deputy County Counsel  
Special Services Division

HSM:mv

## **ORDINANCE NO.**

An ordinance amending Title 5 – Personnel of the Los Angeles County Code relating to the Termination Pay Pick Up Plan.

The Board of Supervisors of the County of Los Angeles ordains as follows:

**SECTION 1.** Chapter 5.18, County of Los Angeles Termination Pay Pick Up Plan is hereby added to read as follows:

### **CHAPTER 5.18**

#### **COUNTY OF LOS ANGELES TERMINATION PAY PICK UP PLAN**

##### **PART 1 GENERAL PROVISIONS**

- 5.18.010 Adoption – Purpose.
- 5.18.020 Definitions.
- 5.18.030 Special Rules Regarding Participating Employers
- 5.18.040 Construction.

##### **PART 2 PARTICIPATION**

- 5.18.050 Commencing Participation.
- 5.18.060 Duration of Participation.

##### **PART 3 TERMINATION PAY CONTRIBUTIONS**

- 5.18.070 Amount of Contribution
- 5.18.080 Pick Up Requirements.
- 5.18.090 Payment to Trustee.
- 5.18.100 Exclusive Benefit.
- 5.18.110 Code Section 415(c) Limitations.

##### **PART 4 PARTICIPANTS' ACCOUNTS: VESTING**

- 5.18.120 Vesting.

##### **PART 5 INVESTMENTS**

- 5.18.130 Investment of Funds.
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## **PART 6 DISTRIBUTIONS**

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## **PART 1 GENERAL PROVISIONS**

### **5.18.010. Adoption – Purpose.**

The County of Los Angeles, pursuant to the order of its Board of Supervisors, hereby adopts the "County of Los Angeles Termination Pay Pick Up Plan," effective as of [ \_\_\_\_\_ ], 2004. The Plan is designated a profit sharing plan and is intended to qualify under Code section 401(a).

The Plan is designed to allow Participants to contribute a portion of their Termination Pay to the Plan and have the County pick up such contributions as provided in Code section 414(h)(2), for the purpose of providing retirement and death benefits to Participants.

While the County intends to continue the Plan, it reserves the right to amend and/or terminate the Plan, in whole or in part, at any time, subject to negotiations with employee representatives. Benefits under the Plan shall at all times be limited to those payable from a Participant's account to the extent funded by contributions that have been made and credited to such account. Therefore, neither participation in the Plan nor eligibility thereafter shall entitle any employee to have the Plan or any of its provisions continued for his benefit in the future.

### **5.18.020. Definitions.**

The following terms when used herein with initial capital letters, unless the context clearly indicates otherwise, shall have the following respective meanings:

1. "Account" means the account established by the Trustee for each Participant pursuant to Part 4 to which each Termination Contribution, as well as any earnings, investment gains or losses, and applicable expenses allocated thereto, is applied.
2. "Administrative Committee" means a committee consisting of the same individuals (including alternates) that serve on the administrative committee for the

County of Los Angeles Deferred Compensation and Thrift Plan. The Administrative Committee for the Plan shall meet jointly with the administrative committee for the Deferred Compensation and Thrift Plan. The Administrative Committee shall be the administrator of the Plan, and may delegate all or part of its powers, duties, and authority in such capacity (without ceasing to be the administrator of the Plan) as hereinafter provided.

3. "Administrator" or "Plan Administrator." The Administrator of the Plan, as defined in Code section 414(g), shall be the Administrative Committee, which may delegate all or any part of its powers, duties and authorities in such capacity (without ceasing to be the Administrator of the Plan) as hereinafter provided.

4. "Agent" means any agent duly authorized to perform specified duties by its respective principal.

5. "Alternate Payee" means any spouse, former spouse, child or other dependent of a participant who is recognized by a QDRO as having a right to receive all, or a portion of, the benefits payable under a plan with respect to such Participant.

6. "Beneficiary" means such person or persons as a Participant may designate to receive his interest under the Plan after his death. The designation may be made, and may be revoked or changed, only by a written instrument (in form acceptable to the Administrative Committee) signed by the Participant and filed with the Administrative Committee before his death. In the absence of a designation and at any other time when there is no existing Beneficiary designated by the Participant, his Beneficiary shall be his spouse, if living 30 days after the date of his death, or, if not, his children (by blood or adoption) equally (with children of a deceased child to share equally the share of such deceased child). If a Beneficiary cannot be determined pursuant to the preceding sentence, the Beneficiary shall be the Participant's estate.

7. "Board" means the Board of Supervisors of the County of Los Angeles.

8. "Code" means the Internal Revenue Code of 1986, as amended.

9. "County" means the County of Los Angeles and any Participating Employer, unless otherwise provided herein. In addition, for the purposes of determining 415 Compensation and applying the limitations under Code section 415(c), the "County" includes any entity the employees of which, together with employees of the County of Los Angeles or a Participating Employer (as applicable), are required to be treated as if they were employed by a single employer under Code section 414(b), (c), (m) or (o) (taking into account any adjustment made pursuant to Code section 415(h)), and any entity whose employees are treated as employees of the County under Code section 414(n).

10. "Discretionary Trustee" means a Trustee who, under the terms of the Trust Agreement, has the discretionary authority to invest the Plan assets in one or more Investment Funds.

11. "Effective Date" means [ ], 2004.

12. "Eligible Employee" means an Employee (i) who is within an employment classification established by the Board, (ii) who is not a Leased Employee, (iii) who is not eligible to participate in the "County of Los Angeles Savings Plan," as set forth in Chapter 5.26 of the Los Angeles County Code, and (iv) to whom eligibility to participate in this Plan has been extended pursuant to a memorandum of understanding or other authorization approved by the Board.

13. "Eligible Retirement Plan" means: (i) an individual retirement account under Code section 408(a); (ii) a "conduit" individual retirement account described in Code section 408(d)(3)(A)(ii); (iii) an individual retirement annuity under Code section 408(b); (iv) an annuity plan described in Code section 403(a); (v) a plan which is qualified under Code section 401(a); (vi) a tax-sheltered annuity contract under Code section 403(b); and (vii) an eligible deferred compensation plan under Code section

457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

14. "Eligible Rollover Distribution" means any distribution of all or part of the balance of an Account to the credit of the Participant in an Eligible Retirement Plan, except for the following:

a. any distribution which is one of a series of substantially equal periodic payments made not less frequently than annually for the life (or life expectancy) of the Participant or Beneficiary or the joint lives (or joint life expectancies) of such individual and his designated Beneficiary, or for a specified period of 10 years or more;

b. any distribution to the extent such distribution is required by Code section 401(a)(9);

c. any distribution which is (a) a return of a portion or all of a Termination Contribution as provided in section 1.415-6(b)(6)(iv) of the Treasury Regulations which is returned due to the limitations under Code section 415, (b) a dividend on employer securities described in Code section 404(k), (c) the P.S. 58 cost of life insurance coverage, or (d) any other similar item designated by the Commissioner of Internal Revenue.

15. "Employee" means any person who: (a) has been determined by the County (regardless of any determination made by any other person or entity) to be an employee of the County within the meaning of Code section 3401(c) for federal income and/or employment tax purposes; or (b) is a Leased Employee as defined in subsection 22 of this Part. If it is determined that an individual was erroneously categorized as not being an Employee, he or she shall be treated as an Employee under the Plan only prospectively from the date of such determination.

16. "415 Compensation" means wages, within the meaning of section 3401(a) of the Code (for purposes of income tax withholding), but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed, paid to an Employee by the County. 415 Compensation includes:

- a. any elective "tax deferred contributions" under the County of Los Angeles Savings Plan and any other County contribution under a cash or deferred arrangement for the year;
- b. any County contributions to purchase an annuity contract under Code section 403(b) under a salary reduction agreement;
- c. any other elective deferral (as defined in Code section 402(g)(3));
- d. any amount that is contributed to a plan sponsored by the County at the election of the Employee and which is not includible in gross income under Code section 125, and any amount that would be available in cash to an Employee under the Choices, Options, Flexible Benefit Plans or Mega-Flex Plans (or a successor plan) if he or she waived health coverage under such plan;
- e. any amount that is contributed to the County of Los Angeles Deferred Compensation and Thrift Plan, the County of Los Angeles Pension Savings Plan or another plan sponsored by the County at the election of the Employee and which is not includible in gross income under Code section 457; and
- f. any amounts that are not includible in the gross income of the Employee by reason of Code section 132(f)(4).

17. "Investment Fund" means any investment vehicle in which the Plan assets are invested. Any such Investment Fund shall be consistent with any limitations on forms of investment imposed under applicable State law.

18. "Investment Manager" means a person or entity appointed by the Administrative Committee or by the Trustee if, under the Trust Agreement, the Trustee is a Discretionary Trustee, who, with respect to an Investment Fund, has the discretion to determine which assets in such Fund shall be sold (or exchanged) and what investments shall be acquired for such Fund or a person or entity that provides investment services to an investment company registered under the Investment Company Act of 1940. Any Investment Manager must be either registered as an investment adviser under the Investment Advisers Act of 1940, a bank as defined thereunder or an insurance company qualified to manage, acquire or dispose of Plan assets under the laws of more than one state, provided, however, that this requirement shall not apply to the County Treasurer and, with respect to an Investment Fund that provides for investments in securities issued by an investment company registered under the Investment Company Act of 1940, the requirements of that act shall control. Any Investment Manager shall accept such appointment in writing and shall constitute a fiduciary with respect to the investment of Plan assets held in the particular Investment Fund for which the appointment applies, unless such person would not be treated as investing assets of the Plan if the Plan was covered by the Employee Retirement Income Security Act of 1974, as amended.

19. "Involuntary Early Severance" means a Participant's severance from County employment less than 90 days after execution of a Payroll Deduction Authorization Agreement due to death, disability, layoff or other events that the County determines are beyond the control of the Participant.

20. "LACERA" means, collectively, the Los Angeles County Employees' Retirement Association and the defined benefit retirement plan administered thereby.

21. "LA Superior Court" means the Superior Court of California, County of Los Angeles.

22. "Leased Employee" means any person described in Code section 414(n)(2), who shall be treated as an Employee solely for the purposes of the plan qualification requirements listed in Code section 414(n)(3), unless the safe harbor set forth in Code section 414(n)(5) applies.

23. "Participant" means an Eligible Employee who has become and continues to be a Participant in the Plan in accordance with the provisions of Part 2.

24. "Participating Employer" means (a) any governmental entity of which the Board is the governing body, and (b) the LA Superior Court to the extent participation in the Plan by the LA Superior Court is authorized by state law or rules of court and unless the LA Superior Court has elected not to participate in the Plan.

25. "Payroll Deduction Authorization Agreement" means the one-time, binding and irrevocable agreement by which an Eligible Employee elects to make a Termination Pay Contribution to the Plan, that satisfies the requirements specified in Section 5.18.080.

26. "Plan" means the County of Los Angeles Termination Pay Pick Up Plan, the terms and provisions of which are herein set forth, as the same may be amended, supplemented or restated from time to time.

27. "Plan Year" means a calendar year.

28. "QDRO" means a "qualified domestic relations order," which is a domestic relations order that the Administrative Committee has determined satisfies the requirements of a qualified domestic relations order as defined in Code section 414(p)(1) and is consistent with the terms of this Plan.

29. "Qualified Plan" means an employee benefit plan that is qualified under section 401(a) of the Code.

30. "Represented Employee" means any Employee in a bargaining unit represented by an employee organization certified by the County Employee Relations Commission.

31. "Required Beginning Date" means the date described in Section 5.18.180 of the Plan.

32. "Severance Date" means the date upon which an Eligible Employee terminates employment with the County for any reason.

33. "Termination Pay" means the amount paid to a Participant upon termination of County employment as a redemption of unused accrued benefits as provided in Los Angeles County Code Section 6.24.040A or as leaving vacation described in County Code Section 6.18.070 (these accrued benefits commonly referred to as "Time Certificates"). The Termination Pay taken into account for all purposes under the Plan shall be limited in accordance with Code section 401(a)(17).

34. "Termination Pay Contribution" means a contribution made by an Eligible Employee pursuant to an Payroll Deduction Authorization Agreement, as specified in Section 5.18.080.

35. "TPA" means a third-party administrator who has entered into a contract with the County to provide record-keeping services, employee communication services, claims administration services or other similar services. Alternatively, the County may act as the "TPA" to provide these services.

36. "Trial Court Act" means the Trial Court Employment Protection and Governance Act, California Government Code Section 71600 et seq.

37. "Trial Court Employee" means a "trial court employee," as defined under the Trial Court Act, who is an Employee of the LA Superior Court.



38. "Trust Agreement" means the agreement(s) executed by the County and a Trustee which establishes either a trust fund or custodial account to provide for the investment, reinvestment, administration and distribution of contributions made under the Plan and the earnings thereon, as amended from time to time.

39. "Trust Fund" means the assets of the Plan held by the Trustee pursuant to the Trust Agreement.

40. "Trustee" means the one or more persons or entities who have entered into a Trust Agreement as a trustee or custodian, and any duly appointed successor. For these purposes, the custodian of any custodial account created for the purposes of holding Plan assets must be a bank, as described in Code section 408(n), or a person who meets the nonbank trustee requirements of paragraphs (2) through (6) of Section 1.408-2(e) of the Income Tax Regulations relating to the use of nonbank trustees. To the extent consistent with applicable law, the County Treasurer may serve as the Trustee. The Trustee may be a Discretionary Trustee.

41. "Valuation Date" means the date with respect to which the value of the Plan assets or any portion thereof is determined. Unless otherwise determined by the Administrative Committee, a Valuation Date occurs each day.

**5.18.030. Special Rules Regarding Participating Employers.**

A. Generally. Notwithstanding the general definition of County in Part 1, Section 5.18.020, with regard to rights and obligations related to the design, amendment, termination or administration of the Plan, including but not limited to those set forth in Parts 7, 8 and 10, the term "County" shall refer exclusively to the County of Los Angeles, and each Participating Employer shall be bound by the actions of the County of Los Angeles.

B. LA Superior Court. If the LA Superior Court does not elect out of participating in this Plan, it will be treated as a separate Participating Employer in the Plan and any Payroll Deduction Authorization Agreement executed by a Trial Court Employee shall be between such Trial Court Employee and the LA Superior Court, and any Termination Pay Contribution made to the Plan on behalf of such Trial Court Employee shall be paid out of the budget of the LA Superior Court.

**5.18.040. Construction.**

A. Unless the context otherwise indicates, the masculine wherever used herein shall include the feminine and neuter, the singular shall include the plural and words such as "herein," "hereof," "hereby," "hereunder," and words of similar import refer to the Plan as a whole and not to any particular part thereof.

B. Where headings have been supplied to portions of the Plan they have been supplied for convenience only and are not to be taken as limiting or extending the meaning of any of its provisions.

C. Wherever the word "person" appears in the Plan, it shall refer to both natural and legal persons.

D. Except to the extent federal law controls, the Plan shall be governed, construed and administered according to the laws of the State of California. All persons accepting or claiming benefits under the Plan shall be bound by and deemed to consent to its provisions.

**PART 2 PARTICIPATION**

**5.18.050. Commencing Participation.**

An Eligible Employee shall become a Participant upon execution of a Payroll Deduction Authorization Agreement.

#### **5.18.060. Duration of Participation.**

After a Participant terminates employment with the County, he shall remain a Participant until his entire Account balance has been distributed; provided, however, that a Participant who is not entitled to a Termination Pay Contribution upon termination from employment with the County shall cease to be a Participant immediately upon such termination.

### **PART 3 TERMINATION PAY CONTRIBUTIONS**

#### **5.18.070. Amount of Contribution.**

Subject to the limitations set forth in Section 5.18.110, an Eligible Employee may elect to have the County deduct a fixed percentage or dollar amount from his Termination Pay and contribute such fixed percentage or dollar amount to the Plan pursuant to a Payroll Deduction Authorization Agreement. The County shall pick up such contribution under Code section 414(h)(2).

#### **5.18.080. Pick Up Requirements.**

A. To make an election as provided in Section 5.18.070, an Eligible Employee shall enter into a Payroll Deduction Authorization Agreement in accordance with procedures established by the Administrative Committee.

B. The Payroll Deduction Authorization Agreement is binding and irrevocable upon execution. A Payroll Deduction Authorization Agreement is deemed executed on the date the completed, signed Agreement is filed with the County or its agent. Once executed, the Payroll Deduction Authorization Agreement may not be amended or revoked. An Eligible Employee who executes a Payroll Deduction Authorization Agreement shall thereafter have no option to receive in cash, or to otherwise direct the disposition of, the fixed percentage or dollar amount of his Termination Pay that he has elected to contribute to the Plan as a Termination Pay Contribution. The Plan shall not accept contributions from any source other than those deducted from Termination Pay.

This Plan does not restrict the Participant's ability to utilize any accrued benefits by taking vacation, sick or other leave while employed with the County.

C. Except as otherwise provided in this Section 5.18.080, a Payroll Deduction Authorization Agreement must be executed at least 90 days prior to the Participant's Severance Date. The Payroll Deduction Authorization Agreement is effective upon execution. The Payroll Deduction Authorization Agreement, however, shall not apply to any Termination Pay that becomes payable in the event the Eligible Employee's Severance Date is less than 90 days after the Payroll Deduction Authorization Agreement is executed, unless the Eligible Employee experiences an Involuntary Early Severance. If the Participant's Severance Date occurs later than originally designated, the Payroll Deduction Authorization Agreement will remain effective until his actual Severance Date.

D. If a Participant is rehired by the County after his Severance Date, any Termination Pay Contribution made on his behalf to the Plan shall remain in the Plan unless and until it is distributed in accordance with Part 6, and the cashed out accrued benefits attributable thereto shall NOT be restored for any reason.

E. Each Eligible Employee shall be eligible to make only one election to have Termination Pay picked up within the meaning of Code section 414(h)(2). Accordingly, an Eligible Employee may not execute more than one Payroll Deduction Authorization Agreement. If the Eligible Employee intends to have a portion of his Termination Pay picked up and contributed to purchase service with LACERA and a portion of his Termination Pay picked up and contributed to the Plan, he must execute a single Payroll Deduction Authorization Agreement covering both elections. If the Eligible Employee elects to contribute Termination Pay both to LACERA and to the Plan, his Termination Pay will be picked up and contributed first to LACERA, in satisfaction of the election to purchase additional retirement credit under the Payroll Deduction Authorization Agreement, and second to the Plan, in satisfaction of the election to contribute to the Plan under the Payroll Deduction Authorization Agreement. In no

event, will the Termination Pay Contribution under the Plan exceed the amount of Termination Pay available after deduction therefrom to make contributions to LACERA in accordance with the Payroll Deduction Authorization Agreement.

F. Termination Pay Contributions made pursuant to this Part 3., although designated under the Plan as employee contributions, shall be paid by the County in lieu of employee contributions.

G. The Payroll Deduction Authorization Agreement shall be signed by the employee. It shall provide that the employee authorizes the appropriate deduction from Termination Pay for the purposes of having it picked up and contributed to the Plan by the County, and that the employee understands and acknowledges the requirements and limitations of this Section 5.18.080.

H. As a condition to entering the Payroll Deduction Authorization Agreement, the County may require an employee to execute a release from liability for any adverse consequences that may result if the Internal Revenue Service or a court determines that a contribution to the Plan pursuant to a Payroll Deduction Authorization Agreement is not a picked up contribution within the meaning of IRC Section 414(h)(2), or that the Plan is not a Qualified Plan.

**5.18.090. Payment to Trustee.**

Each Termination Pay Contribution shall be paid by the County to the Trustee within a reasonable period after a Participant's Severance Date, but in no event later than the last day of the month following the month containing the Participant's Severance Date or the final calculation of the amount of the Termination Pay by the County, whichever is later.

**5.18.100. Exclusive Benefit.**

A. ~~The Plan assets shall be held for the exclusive purpose of providing~~ benefits to Participants and their Beneficiaries and defraying reasonable expenses of administering the Plan in accordance with Part 7.

B. If a Termination Pay Contribution is made by the County due to a mistake of fact, such contribution shall thereafter be returned to the Participant to the extent permitted by applicable law. Additionally, if the Plan, or a portion thereof, is determined by the Internal Revenue Service not to satisfy the requirements of Code section 401(a) for a qualified plan, any Termination Pay Contributions attributable to the period for which it is determined not to be so qualified shall, at the direction of the Administrative Committee, be returned to the Participant.

**5.18.110. Code Section 415(c) Limitations.**

A. Definitions. For the purposes of this Section, the following definitions apply:

1. "Annual Additions" means the sum of the following amounts:

a) all contributions made by the County that are allocated to a Participant's account under a qualified defined contribution plan maintained by the County;

b) all contributions made by the Participant to a qualified defined contribution plan maintained by the County;

c) all forfeitures allocated to a Participant's account under a qualified defined contribution plan maintained by the County, and

d) any amount allocated to an individual medical benefit account (as defined in Code section 415(l)(2)) of a Participant that is part of a pension annuity plan

maintained by the County (except that the 100 percent of 415 Compensation limit does not apply to such an individual medical benefit account).

2. "Limitation Year" means the twelve consecutive month period used by a qualified plan for the purposes of computing the limitations on benefits and annual additions under Code section 415. The Limitation Year for this Plan is the Plan Year (calendar year).

B. Limit on Annual Additions. Notwithstanding any other provisions of the Plan, the Annual Addition for a Participant for any Limitation Year shall not exceed the lesser of (i) \$40,000, as adjusted after 2002 for increases in the cost-of-living under Code section 415(d), or (ii) 100 percent of the Participant's 415 Compensation for the Plan Year. The limits set forth in this subsection constitute the "Contribution Limit" for such Limitation Year.

C. Excess Annual Additions. If a Participant's Annual Additions would exceed the limitations of subsection 5.18.110B for a Limitation Year, as soon as practicable following the Limitation Year a portion of the Termination Pay Contribution made for such Eligible Participant for such Limitation Year (together with gains attributable thereto) shall be treated as an Employee contribution not eligible to be picked up under Part 3 and returned to him as a corrective disbursement to the extent necessary to satisfy the limitations under subsection 5.18.110.B.

If the Participant participates in more than one defined contribution plan maintained by the County, the Termination Pay Contribution shall in all cases be treated as if it was made after any Annual Additions to any other plan and any reduction of Excess Annual Additions will be made first from this Plan in accordance with subsection 5.18.110.B

D. Aggregation of Plans. For the purposes of applying the limitations set forth in this Section 5.18.110, all qualified defined contribution plans (whether or not

terminated) ever maintained by the County shall be treated as one defined contribution plan.

#### **PART 4 PARTICIPANTS' ACCOUNTS: VESTING**

##### **5.18.120. Vesting.**

The Trustee shall maintain an Account for each Participant. The Account of each Participant shall be credited with earnings thereon, if any, and shall be credited or debited, as the case may be, with the net amount of any gains or losses which may result from the investment of the Account in the Investment Fund. The County, the Administrative Committee and the Trustee shall not be liable for any losses on any investment credited to any Account. The interest of each Participant in his Account will be 100 percent vested and nonforfeitable at all times.

#### **PART 5 INVESTMENTS**

##### **5.18.130. Investment of Funds.**

A. Trust Fund. Notwithstanding any contrary provision of the Plan, in accordance with section 401(a) of the Code, all contributions to the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property or rights shall be held in trust and/or in one or more custodial accounts for the exclusive benefit of Participants and Beneficiaries under the Plan. Any trust under the Plan shall be established pursuant to a written agreement that constitutes a valid trust under the law of the State of California, and any custodian of a custodial account under the Plan shall be a bank, as described in Code section 408(n), or a person who meets the nonbank trustee requirements of Paragraphs (2) through (6) of section 1.408-2(e) of the Income Tax Regulations relating to the use of nonbank trustees.

B. Investment of Trust Assets. If the Trustee is a Discretionary Trustee, it shall invest the assets of the Trust Fund in one or more Investment Funds as it may determine in its discretion. If the Trustee is not a Discretionary Trustee, it shall invest the assets of the Trust Fund as instructed by the Administrative Committee or its Agent



in one or more Investment Funds as the Administrative Committee or its Agent in its discretion may determine.

**5.18.140. Trust Fund Allocation and Valuation.**

**A. Allocation.**

1. If the Trustee is not a Discretionary Trustee, the assets credited to each Participant's Account shall be allocated among the Investment Funds in accordance with the investment option or options chosen by the Administrative Committee effective no later than the first business day following the date on which the Trustee or its Agent has received appropriate instructions, or such later date as is commercially reasonable under the circumstances, unless otherwise provided by the Administrative Committee.

2. As of each Valuation Date, the net gain or loss of each Investment Fund, determined in accordance with subsection 5.18.140.B of this Part, shall be allocated by the Trustee or its Agent in accordance with the instructions received by the Trustee from the TPA to the Account of Participants in such Investment Funds in proportion to the amounts of such Account invested in such Investment Fund on such Valuation Date, exclusive of amounts to be credited but including amounts (other than the net loss, if any, determined pursuant to subsection 5.18.100.B) to be debited to such Account as of such Valuation Date.

**B. Valuation.**

1. As of the close of business each Valuation Date, the Administrative Committee, its Agent or the Trustee, if it is a Discretionary Trustee, shall determine or cause to be determined the value of each Investment Fund. The Administrative Committee, its Agent or such Discretionary Trustee may rely on net asset value calculations, book values and other data with respect to the value of Plan assets held in the Investment Funds furnished to it by the Investment Managers, the County

Treasurer, custodians or other entities authorized to provide valuation data. If the Trustee is not a Discretionary Trustee responsible for valuation, the Administrative Committee or its Agent shall communicate such valuation to the Trustee.

2. Each such valuation shall be made on the basis of the net gain or loss to each such Investment Fund between the current Valuation Date and the last preceding Valuation Date. The net gain or loss of an Investment Fund shall include realized and unrealized earnings, interest income, dividends actually paid and other income of such Fund during such period, and shall be reduced by expenses paid, if any, that are to be charged to such Investment Fund in accordance with the terms of the Plan and the Trust Agreement. The transfer of funds to or from an Investment Fund, the allocation of Termination Pay Contributions, and payments, distributions and withdrawals from an Investment Fund to provide benefits under the Plan for Participants or Beneficiaries shall not be deemed to be income, expenses or losses of the Investment Fund. A similar valuation shall be made at any other time the Administrative Committee or its Agent deems it appropriate to make such a valuation.

3. Notwithstanding the foregoing, the Administrative Committee or its Agent may, in accordance with applicable requirements of the Code and California law, (a) adopt, or instruct a Discretionary Trustee to adopt, such accounting procedures as the Administrative Committee or its Agent considers appropriate, reasonable and equitable to establish a proportionate crediting of net gain or loss of an Investment Fund and of Contributions made to an Investment Fund as of each Valuation Date, and (b) adopt, or instruct a Discretionary Trustee to adopt, such other valuation procedures as the Administrative Committee or its Agent considers appropriate, reasonable and equitable to determine the value of the Investment Funds. The reasonable and equitable decision of the Administrative Committee or a Discretionary Trustee, as applicable, as to the value of each Investment Fund as of each Valuation Date shall be conclusive and binding upon all Participants and Beneficiaries having any interest, direct or indirect, in such Investment Fund.

C. No Guarantee Against Loss. The County, the Board, the Administrative Committee, the TPA and the Trustee do not guarantee in any manner the Investment Funds or any part thereof against loss or depreciation. All persons having an interest in the Investment Funds shall look solely to such Funds for payment with respect to such interest.

## **PART 6 DISTRIBUTIONS**

### **5.18.150. Distribution on Termination of Employment.**

A. A Participant who terminates employment with the County for any reason is eligible to receive the entire balance in his Account in a single lump-sum payment. To obtain a distribution under the Plan, such Participant shall submit an application for benefits to the Administrative Committee, furnishing such information as the Administrative Committee or its duly authorized Agent may require. All distributions hereunder shall be made as soon as administratively practicable after the Participant's application is filed and approved by the Administrative Committee.

B. Notwithstanding subsection A of this Section, if a Participant's Account does not exceed \$1,000 at the time of his termination of employment with the County, the Administrative Committee may instruct the Trustee to distribute the entire Account balance in a single lump-sum payment as soon as administratively practicable without the Participant's consent.

C. Notwithstanding any provision of the Plan to the contrary, distributions will be made by the Required Beginning Date in accordance with Code section 401(a)(9) and the regulations thereunder and Section 5.18.180. Such provisions shall override any inconsistent distribution election.

D. A Participant has not terminated employment with the "County" for the purposes of this Section when he or she moves to another employer whose Eligible Employees also participate in the Plan.

**5.18.160. Distributions on Death.**

A. Upon the Participant's death prior to distribution, the Participant's Beneficiary is eligible to receive the entire balance in the Participant's account in a single lump-sum payment. To request a distribution under the Plan, the Beneficiary shall submit an application for benefits to the Administrative Committee, furnishing such information as the Administrative Committee or its duly authorized Agent may require. Distributions hereunder shall be made as soon as administratively practicable after the Beneficiary's application is filed pursuant to this subsection and approved by the Administrative Committee.

B. Notwithstanding subsection A of this Section, even if a Beneficiary does not file an application, the Administrative Committee may distribute the Participant's Account balance to the Beneficiary, without his or her consent, as soon as administratively practicable following the notice to the Administrative Committee of the Participant's death.

C. Notwithstanding any provision of the Plan to the contrary, distributions will be made by the Required Beginning Date in accordance with Code section 401(a)(9) and the regulations thereunder and Section 5.18.18. Such provisions shall override any inconsistent distribution election.

**5.18.170. Valuation Date for Distribution Purposes.**

A Participant's Account balances will be valued as of the Valuation Date immediately preceding the date of distribution.

**5.18.180. Code Section 401(a)(9) Minimum Distribution Requirements.**

A. Generally. Notwithstanding any provision of the Plan to the contrary, all distributions must comply with Code section 401(a)(9) and the Treasury Regulations thereunder. The only permissible distribution option under this Plan is a lump-sum

distribution and, thus, the Participant's entire account balance must be distributed no later than the Required Beginning Date, as defined below.

B. Definitions. For the purposes of this Section, the following terms, when used with initial capital letters, shall have the following respective meanings:

1. "Designated Beneficiary": The person who is designated as the Beneficiary as defined in Part 1, Section 5.18.020 and is the designated beneficiary under section 401(a)(9) of the Code and section 1.401(a)(9)-4 of the Treasury Regulations.

2. "Required Beginning Date": Except as otherwise described in this Section, the Required Beginning Date of any Participant shall be the April 1 of the calendar year following the later of (a) the calendar year he terminates employment or (b) the calendar year he attains age 70 1/2. If the Participant dies before distributions begin, the Required Beginning Date is December 31 of the calendar year containing the fifth anniversary of the Participant's death.

#### **5.18.190. Loans Prohibited.**

Participants may not borrow any amounts from their Accounts.

#### **5.18.200. Lost Participants.**

If the Participant or his or her Beneficiary cannot be located within four years of the date the Participant's interest under the Plan is first payable, the entire balance in his Account shall be forfeited; provided, however, that the amount so forfeited shall be reinstated as of the date of the subsequent filing of an application for benefits under the Plan. Amounts restored to lost Participant's Account in accordance with this Section shall be restored out of forfeitures as provided in Section 5.18.210. The restoration of a lost Participant's Account balance will not be treated as an Annual Addition. Payment

of the restored amount shall be paid in a lump-sum benefit no later than 60 days after the lost Participant's application is approved by the Administrative Committee.

**5.18.210. Application of Forfeitures.**

The amount of a Participant's Account which is forfeited in accordance with Section 5.18.200 shall be placed in one or more forfeiture accounts held in the Trust Fund and applied to restore the accounts of lost Participants who have filed an application for benefits that has been approved by the Administrative Committee, if any. Earnings on the forfeiture account held in the Trust Fund shall be used to reduce administrative expenses of the Plan in accordance with Part 7, Section 5.18.300.

**5.18.220. Rollovers.**

A. Rollovers From the Plan.

1. A Participant who is entitled to receive an Eligible Rollover Distribution from the Plan may direct the Administrative Committee to have the distribution transferred in a lump sum directly to the trustee of an Eligible Retirement Plan; provided, however, that an eligible deferred compensation plan described in Code section 457(b), which is maintained by an eligible employer described in Code section 457(e)(1)(A), may receive an Eligible Rollover Distribution from the Plan only if it provides for separate accounting as required under Code section 402(c)(10).

2. In order for a transfer to be made with respect to a Participant under this Section, (a) the Participant must designate in writing the Eligible Retirement Plan to receive the transferred amounts; (b) the Participant must timely provide the Administrative Committee with adequate information to enable the Administrative Committee to determine that the transferee plan is an Eligible Retirement Plan described above; (c) the entire amount to be transferred must be an Eligible Rollover Distribution; and (d) the Participant must have received proper notice in accordance with Code section 402(f).

3. A Participant's surviving spouse who becomes eligible to receive a distribution on the Participant's death under Section 5.18.160, or an Alternate Payee who is a Participant's spouse or former spouse who becomes eligible to receive a distribution under Section 5.18.360 shall be treated as the Participant for purposes of this Section.

B. Rollovers to the Plan Not Permitted.

1. The Plan shall not accept any cash or property that constitutes an Eligible Rollover Distribution from an Eligible Retirement Plan.

**PART 7 ADMINISTRATION OF THE PLAN AND TRUST AGREEMENT**

**5.18.230. Responsibility for Administration.**

As Administrator, the Administrative Committee shall have sole and exclusive responsibility for the administration of the Plan, including but not limited to the preparation and delivery to the Los Angeles County Board of Supervisors, Participants, Beneficiaries and governmental agencies of all information, descriptions and reports required by applicable law. Each fiduciary shall have such powers, duties and authorities as shall be specified in the Plan or Trust Agreement. The Administrative Committee shall also be responsible for contracting with any private firm selected by the Committee according to County policies and procedures to provide services related to the Plan

**5.18.240. Administrative Committee Procedure.**

A. The chairman of the Administrative Committee shall be the Chief Administrative Officer of the County. The chairman of the Administrative Committee shall select a secretary and may select such other officers as are needed from time to time. The members of the Administrative Committee or their designated representatives may authorize one or more of their number or any duly appointed Agent

or County employee to carry out action that may be taken by the Administrative Committee.

B. The Administrative Committee shall hold meetings at least quarterly or more often at the call of the chairman, provided that it shall meet jointly with the administrative committee for the County of Los Angeles Deferred Compensation and Thrift Plan. A majority of the members of the Administrative Committee shall constitute a quorum and all action taken by the Administrative Committee shall be by majority vote at a meeting at which a quorum is present. The Administrative Committee shall maintain written minutes of its meetings.

**5.18.250. Authority.**

A. In addition to responsibilities and powers set out elsewhere in the Plan, the Administrative Committee shall have the following powers, which may be delegated to one or more Agents or the County:

1. The Administrative Committee shall have sole and exclusive authority to interpret where necessary the provisions of the Plan and determine the rights and benefits of Participants and other persons under the Plan. Such authority and power shall include the following: (i) resolving all questions relating to the eligibility of Employees to become Participants; (ii) determining eligibility for and the amount of benefits payable to Participants or their Beneficiaries, and determining the time and manner in which such benefits are to be paid in accordance with the terms of the Plan; (iii) authorizing and directing all disbursements by the Trustee from the Trust Fund; (iv) construing and interpreting the Plan and the Trust Agreement and adopting rules for administration of the Plan and the Trust Agreement which are not inconsistent with the terms of such documents; and (v) resolving all questions of fact with respect to any matter arising in connection with the administration of the Plan.



2. The Administrative Committee will establish rules and procedures to be followed by Participants and Beneficiaries in filing applications for benefits, in furnishing and verifying proofs that are satisfactory to the Administrative Committee for the determination of age, marital status, termination of service, Beneficiary designation, and in any other matters required to administer the Plan.

3. The Administrative Committee may modify any notice period required by the Plan or designate any County officer to serve as the recipient of any form or notice that has to be filed under the Plan.

4. The Administrative Committee shall instruct the Trustee as to the benefits to be paid hereunder and shall furnish the Trustee with any further information reasonably required by it for the purpose of distributing such benefits and making investments in or withdrawals from one or more of the Investment Funds.

5. The Administrative Committee may contract with one or more Investment Managers, or enter one or more investment arrangements, with respect to the Investment Funds.

6. The Administrative Committee shall also have the authority to contract with one or more private firms for services related to the Plan, consistent with Section 44.7 of the Los Angeles County Charter, Part 3 of Chapter 2.104 of this Code, State and County contracting policies and Chapter 7 of Title 9 of the California Government Code (Section 87000, et seq.).

7. Subject to the provisions of Section 5.18.260 and Section 5.18.320, all decisions of the Administrative Committee as to the facts of any case and the application thereof to any case, as to the interpretation of any provision of the Plan or its application to any case, and as to any other interpretive matter or other determination or question related to the Plan or its administration shall be final and

conclusive, to the extent permitted by law, as to all interested persons for all purposes of the Plan.

B. The Administrative Committee may assign additional duties and responsibilities to its members, and, with the exception of those duties expressly reserved to the County, may from time to time reassign any of the duties and responsibilities set forth in this Section as it deems appropriate.

C. The County, as Plan sponsor, shall be responsible for contracting with the Trustee(s) and the TPA.

D. The County Treasurer is responsible for recommending to the Administrative Committee contracts for the guaranteed investment contracts or bank deposit funds that comprise the fixed income Investment Funds, and for administering all investment contracts.

E. The CAO shall be responsible for recommendations to the Board on all matters involving the appointment or removal of the Trustee, the County budget, employee relations and County policy relating to the Plan. The CAO also shall be responsible for recommendations to the Administrative Committee concerning Plan operations and for the conduct of certain business operations on the Administrative Committee's behalf, including the review of Plan expenses to determine that they do not exceed approved limits, the purchase of fiduciary liability insurance, the administration of the Trust Agreement, TPA contracts and any communication regarding Plan provisions or services contracts regarding the same.

F. The Director of Personnel for the County shall be responsible for all Participant contact and services associated with the Plan.

G. The County Counsel shall provide, or contract for, all legal advice or representation required by the Administrative Committee and/or the County and its officers and employees in connection with their administration of the Plan.

H. The County Auditor-Controller shall be responsible for recommending a Plan auditor, administering auditor contracts, writing the specifications for Plan audits, supervising Plan audits, processing of payroll deferrals and County contributions, maintaining appropriate County accounting records, transferring of funds and account allocation information to the TPA, Trustees or Investment Managers, and periodic reviews of the financial integrity of the Plan.

I. Each of the above County officers may discharge any duty required by this Section through any designated deputy or assistant or contractor.

J. The Trustee has only those duties set forth in the Trust Agreement. The Trust Agreement is hereby incorporated in the Plan by reference.

K. The County expressly reserves to itself the duties set forth in subsection C, the first sentence of subsection E and subsections G and H of this Section.

**5.18.260. Revocability of Action.**

Any action taken by the Administrative Committee with respect to the rights or benefits under the Plan of any Participant or Beneficiary shall be revocable by the Administrative Committee as to payments, distributions or deliveries not theretofore made hereunder pursuant to such action. Notwithstanding Section 5.18.330, appropriate adjustments may be made in future payments or distributions to a Participant or Beneficiary to offset any excess payment or underpayment theretofore made hereunder to such Participant or Beneficiary.

**5.18.270. Employment of Assistance.**

The Administrative Committee may employ such expert communication and enrollment, legal, accounting, investment, trustee, custody, or other assistance as it deems necessary or advisable for the proper administration of the Plan and Investment Funds.

**5.18.280. Uniform Administration of Plan.**

All action taken by the Administrative Committee under the Plan shall treat all persons similarly situated in a uniform and consistent manner.

**5.18.290. Payment of Benefits.**

All payments of benefits provided for by the Plan (less any deductions provided for by the Plan) shall be made solely out of the Investment Funds in accordance with instructions given to the Trustee by the Administrative Committee, and the County shall not be otherwise liable for any benefits payable under the Plan.

**5.18.300. Expense Charges to Plan.**

A. Prior to the beginning of each County fiscal year, the Administrative Committee shall determine the amount of annual fees that it reasonably estimates will be necessary to properly administer the Plan during such fiscal year. For purposes of its determination, the Administrative Committee shall take into account (i) direct, additional County costs expected to be incurred as a result of County employees performing the functions defined in Part 7 and (ii) the cost of contractors that provide services to the Plan, including, without limitation, fiduciary and liability insurance coverage, communication consultants, investment advisors, auditors and legal services, pursuant to contracts that are approved by the Board or the Administrative Committee. The expenses subject to this subsection A shall not include: (1) TPA fees, or (2) Trustee fees and investment management and custodial fees incident to the Investment Funds, all of which are addressed in subsection B.

1. The expenses incurred as a result of County employees performing the functions defined in Part 7 shall not exceed the amount approved by the Board of Supervisors in the County budget.

2. Expenses incurred as a result of contractors performing the Plan functions described in this Part 7, and the cost of fiduciary and liability insurance, are limited by the contract or contracts approved by the Administrative Committee or the Board.

3. The annual fees approved by the Administrative Committee may be charged through the Trustee or reimbursed from Plan assets and paid to the County.

4. The estimated annual fees for the Plan approved by the Administrative Committee pursuant to this subsection will be charged to each Participant's account on a per-capita basis. The per-Participant, annual charge will be determined by dividing the estimated annual fees for the Plan by the number of Participants on the last day of the month prior to the beginning of the fiscal year for which the fees are being determined. The per-Participant annual charge will be divided by 12 and billed monthly to each Participant's account during the fiscal year. A Participant will be billed only for months in which he or she has an account balance in the Plan. The monthly charges will appear on the Participant's quarterly statement.

5. Employees who become Participants in the Plan during the fiscal year will be charged the same monthly per-Participant charge determined prior to the beginning of the fiscal year by the Administrative Committee.

6. Until such time as the Administrative Committee approves a new annual fee, Participants will be charged the same monthly per-Participant charge as previously set by the Administrative Committee.

7. The Administrative Committee may assess an emergency surcharge to Participant's accounts if it reasonably determines that actual Plan expenses authorized by the subsection will exceed the estimated annual fees determined prior to the beginning of the fiscal year.

8. Expenses incurred by members of the Administrative Committee as a result of performing their duties under the Plan will be charged through the Trustee or reimbursed from Plan assets and paid to the member incurring such expense. Such expenses may include the costs of educational materials or classes relating to plan administration or investments if the Administrative Committee determines that such costs are reasonable and necessary.

B. TPA, Trustee fees, and investment management and custodial fees incident to the Investment Funds are limited by the contract or contracts approved by the Administrative Committee or the Board. TPA and Trustee fees will be charged through the Trustee or reimbursed from Plan assets and will be allocated to the individual Participants' accounts and reflected on quarterly statements. Investment management and custodial fees incident to the Investment Funds shall be periodically charged to the appropriate Investment Fund.

C. In the event that the Plan accumulates (i) fees in excess of actual administrative expenses, or (ii) unallocated earnings from Plan operations, the Administrative Committee shall allocate excess fees and earnings first by establishing a reserve for contingencies and payment of planned obligations not to exceed 100% of the aggregate total annual County fees, TPA fees, and Trustee fees charged to Participants the preceding fiscal year, and then by allocating any remainder by reducing TPA fees charged to Participants by a method determined by the Administrative Committee.

#### **5.18.310. Compliance with Laws.**

The Administrative Committee shall have the duty to make changes in the administration of this Plan which are necessary to comply with federal or State of California laws.

#### **5.18.320. Claims Procedures.**

A. Initial Claim. Any Participant or Beneficiary who believes that he or she is entitled to receive a benefit under the Plan must file an application with the Administrative Committee as provided in Part 6.

B. Appeal. If an application for benefits is denied, the Participant or Beneficiary will be advised of his or her right to appeal the denial to the Administrative Committee. The Participant or Beneficiary may appeal the denial of his or her application by filing with the Administrative Committee a written request for review of such claim stating the specific facts supporting his or her claim and specifying the remedy sought. The appeal shall be reviewed by Agents of the Administrative Committee. If the Agents determine that the claim is valid, benefits shall be distributed as soon as administratively feasible in accordance with the terms of the Plan. If, however, such Agents recommend denial of the claim, such appeal shall be reviewed by the Administrative Committee at its next open meeting. The determination of the Administrative Committee as to the denial of a claim on appeal shall be final and binding to the extent permitted by law.

### **PART 8 FIDUCIARY RESPONSIBILITY**

#### **5.18.330. Responsibilities Generally.**

The Plan fiduciaries shall have only such powers, duties, responsibilities and authorities as are specified in the Plan or the Trust Agreement. The Board has the responsibility for appointing, employing or removing any Plan Trustee, for approving certain expenses charged to the Plan in accordance with Section 5.18.300, and for other duties as set forth in the Plan. The Administrative Committee, as Plan Administrator, is a Plan fiduciary with the responsibility and discretionary authority for interpreting the terms of the Plan, for administering the Plan in accordance with its terms, for appointing or removing any Investment Manager and entering into investment arrangements with respect to the Investment Funds (unless a Directed Trustee has the

responsibility and discretionary authority to appoint and remove Investment Managers and enter into investment arrangements), for incurring or approving certain expenses and charging them to the Plan in accordance with Section 5.18.300, and for other duties as set forth in the Plan.

The Administrative Committee and all other persons with discretionary control respecting the operation, administration, control or management of the Plan or the Trust Fund:

(1) will perform their duties under the Plan and the Trust Agreement for the exclusive benefit, and solely in the interest, of Participants and their Beneficiaries;

(2) shall be governed by, and adhere to, Chapter 7 of Title 9 of the California Government Code (Section 87000, et seq.), including but not limited to the disclosure and disqualification requirements and the limitations on gifts and honorariums set forth therein; and

(3) shall act in accordance with the Uniform Prudent Investor Act and the other provisions of California Trust Law.

Provisions (2) and (3) in the previous sentence shall not apply to a Plan fiduciary to the extent such provisions conflict with, or another standard of fiduciary conduct is expressly provided in, the terms of the applicable Trust Agreement, TPA contract or Investment Manager contract negotiated with such fiduciary.

**5.18.340. Immunities.**

Except as otherwise provided by the Trust Agreement:

A. No fiduciary shall be liable for any action taken or not taken with respect to the Plan or the Trust Agreement except for his or her own negligence or willful misconduct except as otherwise provided in subsection B;



B. A fiduciary shall be liable for a breach of duty committed by another fiduciary (a "co-fiduciary") only under the following circumstances: (a) where the fiduciary participates in the breach of duty committed by a co-fiduciary, (b) where the fiduciary improperly delegates its duties to a co-fiduciary, (c) where the fiduciary approves, knowingly acquiesces in, or conceals a breach of duty committed by a co-fiduciary, (d) where the fiduciary negligently enables a co-fiduciary to commit a breach of duty, or (e) where the fiduciary fails to take reasonable steps to compel a co-fiduciary to redress a breach of duty if the fiduciary knows of, or has information from which he or she reasonably should have known of, the breach of duty;

C. The County and each officer and Employee thereof, the Administrative Committee and each member thereof, and any other person to whom the County or Administrative Committee delegates (or the Plan or Trust Agreement assigns) any duty with respect to the Plan or the Trust Agreement, may rely and shall be fully protected in acting in good faith upon the advice of counsel, who may be counsel for the County, upon the records of the County, upon the opinion, certificate, valuation, report, recommendation, or determination of the third-party administrator, the Trustee, and Investment Manager, the County Treasurer or of the County Auditor-Controller, or upon any certificate, statement or other representation made by or any information furnished by an Employee, a Participant, a Beneficiary or the Trustee concerning any fact required to be determined under any of the provisions of the Plan;

D. If any responsibility of a fiduciary is allocated to another person, then, except to the extent provided in subsection B, such fiduciary shall not be responsible for any act or omission of such person in carrying out such responsibility; and

E. No fiduciary shall have the duty to discharge any duty, function or responsibility which is assigned by the terms of the Plan or Trust Agreement or delegated pursuant to the provisions of Part 7, to another person.

## **PART 9 MISCELLANEOUS**

### **5.18.350. Nonalienation.**

To the extent permitted by law and except as otherwise provided in the Plan, no right or interest of any kind of a Participant or Beneficiary hereunder shall be transferable or assignable by the Participant or Beneficiary, nor shall any such right or interest be subject to alienation, anticipation, encumbrance, garnishment, attachment, execution or levy of any kind, voluntary or involuntary.

### **5.18.360. Rights of an Alternate Payee Under a QDRO.**

A. Notwithstanding Section 5.18.350 of this Part, an Alternate Payee shall have the right to make a claim for any benefits awarded to the Alternate Payee pursuant to a QDRO as provided in this Section. If an Alternate Payee is awarded a specified interest in the Account of the Participant pursuant to a QDRO, such interest of the Alternate Payee shall be segregated and separately accounted for by the Trustee in the name and for the benefit of the Alternate Payee.

B. Upon receipt of a domestic relations order, or, if earlier, notice that a domestic relations order may be sought, the Administrative Committee shall suspend distributions from the Participant's Account, and shall take steps to ensure that the Participant and each Alternate Payee is aware of the order or proposed order and the suspension of distributions from the Participant's Account. Moreover, the Administrative Committee shall determine, within a reasonable period after receipt of such order, whether such order is a QDRO. If the order is determined to be a QDRO, the Alternate Payee's interest under such order shall be segregated and/or distributed in accordance with the QDRO and this Section. If the order is determined not to be a QDRO, and the domestic relations order is not modified as necessary to constitute a QDRO within a reasonable period of time after such determination, the suspension of distributions from the Participant's Account shall be discontinued. If an order is not received within a reasonable period of time after the County has been notified that such

an order is being sought, the suspension of distributions from the Participant's Account shall be discontinued.

C. Distributions to the Alternate Payee shall be made in accordance with the QDRO provided that the QDRO does not conflict with the Plan's distribution provisions or the provisions of this Section 5.18.360. The Alternate Payee's interest may be distributed only in a lump-sum cash payment.

D. The Alternate Payee's interest specified in the QDRO shall be segregated and/or distributed from the Participant's Account, and the Investment Funds in which such Account are invested, on a pro rata basis.

E. Unless the QDRO provides otherwise, an Alternate Payee shall have the right, in the same manner as a Participant, to designate a Beneficiary, who shall receive benefits payable to the Alternate Payee in the event that all of the Alternate Payee's benefits have not been distributed at the time of the Alternate Payee's death. If the Alternate Payee does not designate a Beneficiary, or if the Beneficiary predeceases the Alternate Payee, benefits payable to the Alternate Payee which have not been distributed shall be paid to the Alternate Payee's estate. Any death benefits payable under this Section shall be paid in a lump sum as soon as administratively practicable after the Administrative Committee receives notice of the Alternate Payee's death, with or without the Beneficiary's consent.

#### **5.18.370. Facility of Payment.**

Whenever any Participant entitled to benefits under the Plan shall be under a legal disability or, in the sole judgment of the Administrative Committee, shall otherwise be unable to apply benefits to his own best interest and advantage, the Trustee, at the direction of the Administrative Committee, may make payments to the Participant's legal representative, and the decision of the Administrative Committee shall completely

discharge the liability of the Plan, the Administrative Committee, the County and the Trustee with respect to such benefits.

**5.18.380. No Enlargement of Employment Rights.**

The County by adopting the Plan and taking any action with respect to the Plan does not obligate itself to continue the employment of any Participant for any period.

**5.18.390. Severability Provision.**

If any provision of the Plan or the application thereof to any circumstance or person is invalid the remainder of the Plan and the application of such provision to other circumstances or persons shall not be affected thereby.

**5.18.400. Military Service.**

Notwithstanding any provisions of this Plan to the contrary, a contribution that is required with respect to a Participant's "qualified military service" will be provided in accordance with section 414(u) of the Code. "Qualified military service" means any service in the uniformed services (as defined in Chapter 43 of Title 38 of the United States Code) by any individual if such individual is entitled to reemployment rights under such chapter with respect to such service.

**5.18.410. Electronic Media.**

Notwithstanding any provision in this Plan to the contrary, including provisions requiring the use of a written instrument, the Administrative Committee may establish procedures for the use of electronic media in communications and transactions between the Plan or the Administrative Committee and Participants and Beneficiaries; provided, however, that any such procedures shall comply with applicable law. Electronic media may include, but are not limited to, e-mail, the Internet, intranet systems and automated, telephonic voice-response systems.

#### **5.18.420. Temporary Suspension of Plan Provisions.**

Notwithstanding any provision of the Plan to the contrary, during any conversion period (including but not limited to a change of Trustee, TPA or Investment Funds), in accordance with procedures established by the Administrative Committee, the Administrative Committee may temporarily suspend, in whole or in part, certain provisions of the Plan, which may include, but are not limited to, a Participant's right to enter into a Pickup Agreement or obtain a distribution from his Account.

### **PART 10 AMENDMENT OR TERMINATION**

#### **5.18.430. Right to Amend or Terminate.**

A. Generally. Except as provided in subsection B, below, the Plan may be amended or terminated by the County at any time. No amendment or termination of the Plan shall reduce or impair the rights of any Participant or Beneficiary to the vested interest in their Accounts.

B. Represented Employees. Notwithstanding anything to the contrary in subsection A above, with respect to Represented Employees, the termination of the Plan or the amendment of any Plan provisions that are subject to negotiation shall be negotiated with representatives of the Represented Employees.

C. No Vested Contractual Rights. Because the Plan is subject to amendment and termination as set forth herein, neither participation in the Plan nor eligibility therefore shall entitle any employee to have the Plan or any specific terms thereof continued in the future.

**5.18.440. Procedure for Termination or Amendment.**

Any termination or amendment of the Plan pursuant to Section 5.18.430 shall be expressed in an instrument executed by the County on the order of its Board of Supervisors and filed with the Trustee, and shall become effective as of the date designated in such instrument or, if no date is so designated, on its execution.

**5.18.450. Distribution Upon Termination.**

In the event that the Plan is terminated by the County, the Trustee shall distribute each Participant's Account in a lump sum payment as soon as administratively practical to each Participant or his or her Beneficiary.

**5.18.460. Failure to Qualify Under Code Section 401(a) or Satisfy Code Section 414(h)(2).**

Notwithstanding anything else contained herein, the Plan shall be subject to the issuance by the Internal Revenue Service of (a) a determination or ruling to the effect that the Plan as adopted (or as modified by any amendment thereto made for the purpose of securing such determination or ruling) meets the applicable requirements of section 401(a) of the Code; and (b) a ruling that Termination Pay Contributions made pursuant to Payroll Deduction Authorization Agreements are "picked up" within the meaning of Code Section 414(h)(2). If the County does not receive such determinations or rulings within 12 months after it requests them or, if earlier, within 24 months after the Plan is adopted by the County, then, notwithstanding any other provision of the Plan, the County may elect to declare the Plan to be retroactively void as of the date of the amendment and restatement by giving written notice to the Trustee that no such Internal Revenue Service determination or ruling has been received, and cause the return of any Termination Pay Contributions and the earnings thereon to the Participants.

## **PART 11 EGTRRA SUNSET**

### **5.18.470. EGTRRA Sunset Provisions.**

If the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"), sunset, the corresponding provisions of the Plan shall be interpreted to incorporate the provisions of the Code without regard to EGTRRA; such provisions include: Section 5.18.110.B (Code section 415 limits); Section 5.18.220 (Rollover provisions) and such other provisions that the Administrative Committee determines must be interpreted to reflect the sunset of relevant EGTRRA provisions.

262978.1

**ATTACHMENT III**

**SAVINGS PLAN**

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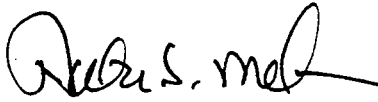


## ANALYSIS

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This ordinance amends Title 5 – Personnel, of the Los Angeles County Code, relating to employee termination pay to be contributed on a pre-tax basis to qualified tax deferred plans by repealing and restating Chapter 5.26.

OFFICE OF THE COUNTY COUNSEL

By   
HALVOR S. MELOM  
Principal Deputy County Counsel  
Special Services Division

HSM:mv

**ORDINANCE NO. \_\_\_\_\_**

An ordinance amending ~~Title 5 – Personnel of the Los Angeles County Code~~ relating to the Savings Plan.

The Board of Supervisors of the County of Los Angeles ordains as follows:

**SECTION 1.** Chapter 5.26, County of Los Angeles Savings Plan is hereby deleted in its entirety.

**SECTION 2.** Chapter 5.26, County of Los Angeles Savings Plan is hereby added and restated to read as follows:

**CHAPTER 5.26**

**THE COUNTY OF LOS ANGELES SAVINGS PLAN**

**Sections:**

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5.26.020 Definitions.

5.26.030 Construction.

5.26.033 Special Rules Regarding Participating Employers.

5.26.035 Limitation on Compensation and Eligible Earnings.

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5.26.040 Commencement of Participation.

5.26.050 Duration of Participation.

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**PART 3 TAX DEFERRED CONTRIBUTIONS**

5.26.060 Tax Deferred Contributions.

5.26.065 After-Tax Contributions.

5.26.070 Payments to Trustee.

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5.26.100 Dollar Limitations.

#### **PART 4 MATCHING CONTRIBUTIONS**

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## **PART 1 GENERAL PROVISIONS**

### **5.26.010. Adoption – Purpose.**

The County of Los Angeles, pursuant to the order of its Board of Supervisors, adopted a profit sharing plan known as "The County of Los Angeles Savings Plan," effective as of September 1, 1984. The Plan was amended and restated generally effective as of January 1, 1997, to comply with the Unemployment Compensation Amendments of 1992, the requirements of the Omnibus Budget Reconciliation Act of 1993, the Uniform Services Employment and Reemployment Rights Act of 1994, the Small Business Job Protection Act of 1996, the Taxpayer Relief Act of 1997, the Internal Revenue Service Restructuring and Reform Act of 1998 and the Economic Growth and Tax Relief Reconciliation Act of 2001. Effective as of [        ], 2004, the County amends and restates this Plan to permit the "pick up" of certain contributions to the Plan.

The Plan is a profit sharing plan with a cash or deferred arrangement intended to qualify under Code Section 401(a) and to meet the requirements of Code Section 401(k). The purpose of the Plan is to permit Employees to defer a portion of their Compensation and provide for retirement, disability and death benefits. The Plan is a retirement benefit enhancement provided to Employees subsequent to the withdrawal of the County from the Social Security System effective December 31, 1982.

While the County intends to continue the plan, it reserves the right to amend and/or terminate the Plan, in whole or in part, at any time. Benefits under the Plan shall at any time be limited to those that are payable from Participants' Accounts to the extent then funded by County Contributions that have already been made and credited to such Accounts. Therefore, while Participants' existing Account balances are at all times fully protected, neither participation in the Plan nor eligibility therefore shall entitle any Employee to have the Plan or any of its provisions continued for his benefit in the future.

#### **5.26.020. Definitions.**

The following terms when used herein with initial capital letters, unless the context clearly indicates otherwise, shall have the following respective meanings:

1. "Account" means a Participant's Tax Deferred Contributions Account, Matching Contributions Account, After-Tax Contributions Account, Termination Pay Contribution Account and Rollover Contributions Account as specified in Section 5.26.190.
2. "Administrative Committee" means the Auditor-Controller, County Counsel, Director of Personnel, Treasurer and Tax Collector, and Chief Administrative Officer of the County, or their designated representatives.
3. "Administrator" or "Plan Administrator." The Administrator of the Plan, as defined in Code Section 414(g), shall be the Administrative Committee, which may delegate all or any part of its powers, duties and authorities in such capacity (without ceasing to be the Administrator of the Plan) as hereinafter provided.
4. "After-Tax Contributions" means contributions made by the County pursuant to a Salary Deduction Agreement as specified in Section 5.26.065.
5. "After-Tax Contributions Account" means an account to which the After-Tax Contributions made for each Participant, and any earnings, investment gains or losses and applicable Plan expenses allocable thereto, are credited.
6. "Alternate Payee" means any spouse, former spouse, child or other dependent of a participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to such Participant.
7. "Beneficiary" means such person or persons as a Participant may designate to receive his interest under the Plan after his death. The designation may be

made, and may be revoked or changed, only by a written instrument (in form acceptable to the Administrative Committee) signed by the Participant and filed with the Administrative Committee before his death. In the absence of a designation and at any other time when there is no existing Beneficiary designated by the Participant, his Beneficiary shall be his spouse, if living 30 days after the date of his death, or, if not, his children (by blood or adoption) equally (with children of a deceased child to share equally the share of such deceased child). If a Beneficiary cannot be determined pursuant to the preceding sentence, the Beneficiary shall be the Participant's estate.

8. "Catch-Up Contributions" means contributions made by the County on or after January 1, 2002, as specified in Section 5.26.060B.

9. "Code" means the Internal Revenue Code of 1986, as amended.

10. a. "Compensation" means base rate, as established in Title 6 of the Los Angeles County Code, as amended, plus:

(1) Any monthly bonus established as a designated number of schedules and/or levels in the Standardized Salary Schedule contained in such Title 6 or established as a percentage of base rate pursuant to Parts 2 or 3 of Chapter 6.08 of such Title 6;

(2) The monthly amounts provided by Sections 5.12.200, 5.27.240A, 5.28.240A, 5.40.460 and 5.40.465;

(3) Any lump-sum payment made upon termination pursuant to Section 5.20.070 or 6.18.070 of the Los Angeles County Code.

b. Compensation shall not include any of the following:

(1) Overtime compensation;

(2) Any lump-sum payoff or reimbursement for unused accumulated overtime, vacation, holiday time, or sick leave benefits;



(3) Compensation pursuant to Section 6.16.010 of the Los Angeles County Code;

(4) Any hourly bonus;

(5) Any monthly bonus established as a flat dollar amount or as a percentage of base rate except that compensation shall include any monthly bonus paid as a percentage of base rate for employees compensated pursuant to Parts 2 or 3 of Chapter 6.08 entitled Management Appraisal and Performance Plan of the Los Angeles County Code.

11. "Compensation Deferral Agreement" means an agreement pursuant to which an Employee agrees to reduce, or to forego an increase in, his Eligible Earnings and the County agrees to contribute to the Plan the amount of the reduction or the amount foregone as a Tax Deferred Contribution.

12. "County" means the County of Los Angeles and (a) any governmental entity of which the Los Angeles County Board of Supervisors is the governing body, and (b) any Trial Court Entity to the extent participation in the Plan by such entity is authorized by state law or rules of court and provided such entity has not elected not to participate in the Plan.

13. "County Contributions" means Tax Deferred Contributions, if any, as specified in Section 5.26.060, After-Tax Contributions, if any, as specified in Section 5.26.065, a Termination Pay Contribution, if any, as specified in Section 5.26.173, and Matching Contributions, if any, as specified in Section 5.26.110.

14. "Disability" means the complete and continuous inability and incapacity of the Participant to perform the duties of his or her position with the County.

15. "Eligible Earnings" means any compensation paid to an Employee for service performed for the County which is currently includible in gross income under the Code, or which would be so includible had the Employee not signed a Compensation

Deferral Agreement. On or after March 1, 2003, Eligible Earnings shall have the same meaning as "415 Compensation."

16. "Eligible Employee" means a full-time permanent Employee who is not a Leased Employee, is not in an Excluded Bargaining Unit and who is designated by the Los Angeles County Board of Supervisors as eligible to participate in the Plan. For purposes hereof, "full-time permanent" means any employee appointed to an "A," "L" or "N" item pursuant to Title 6 of the Los Angeles County Code. Any employee who would otherwise cease to be an Eligible Employee because of a change in employment classification and/or entry into an Excluded Bargaining Unit shall remain an Eligible Employee until the last day of the month following the month in which such change or entry occurs or such later date as the Administrative Committee may provide.

17. "Eligible Rollover Distribution" means any distribution of all or part of the balance to the credit of the Participant in a qualified trust described in Code Section 401(a) (including the Plan where applicable) or in a "conduit" individual retirement account described in Code Section 408(d)(3)(A)(ii), other than (1) any distribution which is one of a series of substantially equal periodic payments made not less frequently than annually for the life (or life expectancy) of the Participant or beneficiary or the joint lives (or joint life expectancies) of such individual and his designated beneficiary, or for a specified period of 10 years or more; (2) any distribution to the extent such distribution is required by Code Section 401(a)(9); and (3) any distribution which is (a) a return of elective deferrals described in Section 1.415-6(b)(6)(iv) of the Treasury Regulations which is returned due to the limitations under Code Section 415, (b) a corrective distribution of excess contributions described in Section 1.401(k)-1(f)(4) of the Treasury Regulations, excess deferrals described in Section 1.402(g)-1(e)(3) of the Treasury Regulations or excess aggregate contributions described in Section 1.401(m)-1(e)(3) of the Treasury Regulations, together with the income allocable thereto, (c) a loan treated as a distribution under Code Section 72(p) and not excepted from such treatment under Code Section 72(p)(2), (d) a deemed distribution of a loan in default, (e) a dividend on

employer securities described in Code Section 404(k), (f) the P.S. 58 cost of life insurance coverage, and (g) any other similar item designated by the Commissioner of Internal Revenue. For distributions made on or after January 1, 2000, an Eligible Rollover Distribution also does not include any distribution or withdrawal of Tax Deferred Contributions due to Hardship as provided in Section 5.26.300 and under Code Section 401(k). For distributions made on or after January 1, 2002, an Eligible Rollover Distribution also does not include any distribution or withdrawal of Matching Contributions or Tax Deferred Contributions due to Hardship as provided in Section 5.26.300.

18. "Employee" means any person who: (a) has been determined by the County (regardless of any determination made by any other person or entity) to be an employee of the County within the meaning of Code Section 3401(c) for federal income and/or employment tax purposes; or (b) is a Leased Employee as defined in subsection 31 of this section and as provided in Section 5.26.055. If it is determined that an individual was erroneously categorized as not being an Employee, he or she shall be treated as an Employee under the Plan only prospectively from the date of such determination.

19. "Entry Date" means September 1, 1984, and the first day of every succeeding month unless otherwise provided by the Administrative Committee.

20. "Excluded Bargaining Unit" means an employee representation unit, unless the representative of such unit and the County agree that the Employees in such unit shall be covered hereunder.

21. "415 Compensation" means wages, within the meaning of Section 3401(a) of the Code (for purposes of income tax withholding) but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed, paid to an Employee by the County. Effective for years beginning on and after January 1, 1998, 415 Compensation also

includes any County contribution under a cash or deferred arrangement (including Tax Deferred Contributions) for the year, any County contributions to purchase an annuity contract under Code Section 403(b) under a salary reduction agreement, any other elective deferral (as defined in Code Section 402(g)(3)) and any amount which is contributed to a plan sponsored by the County at the election of the Employee and which is not includible in gross income under Code Section 125 or Code Section 457. For Limitation Years (as defined in Section 5.26.160) beginning on and after January 1, 2001, 415 Compensation paid or made available during such Limitation Years shall include elective amounts that are not includible in the gross income of the Employee by reason of Code Section 132(f)(4). On or after January 1, 2003, 415 Compensation also includes any amount that is not available in cash to an Employee under the Choices, Options, Flexible Benefit Plans or Mega-Flex Plans (or a successor plan) because the Employee is unable to certify that the Employee has other health coverage. For these purposes, the "County" includes any entity the employees of which, together with employees of the County, are required to be treated as if they were employed by a single employer under Code Section 414(b), (c), (m) or (o) (taking into account any adjustment made pursuant to Code Section 415(h)), and any entity whose employees are treated as employees of the County under Code Section 414(n).

22. "Hardship" means hardship as determined in a uniform and nondiscriminatory manner by the Administrative Committee, taking into account wherever applicable the definition of such term by the Treasury Department in its regulations or other applicable guidance issued under Code Section 401(k), all on the basis of information supplied to the Administrative Committee by the Participant.

23. "Horizons Plan" means the County of Los Angeles Deferred Compensation and Thrift Plan.

24. "Investment Funds" means the investment fund or funds selected from time to time by the Administrative Committee, including the Participant Loan Fund.

25. "Investment Manager" means the person(s) appointed by the Plan Administrator who, under such terms and conditions as the Plan Administrator may decide with respect to an Investment Fund, has the discretion to determine which assets in such Fund shall be sold (or exchanged) and what investments shall be acquired for such Fund. In the alternative, an organization which is employed by the County to provide administrative and investment services (by agreement with one or more investment providers) may be designated an Investment Manager.

26. "Involuntary Early Severance" means a Participant's severance from County employment less than 90 days after execution of a Payroll Deduction Authorization Agreement due to death, disability, layoff or other events that the County determines are beyond the control of the Participant.

27. "LACERA" means, collectively, the Los Angeles County Employees' Retirement Association and the defined benefit retirement plan administered thereby.

28. "Leased Employee" means any person described in Code Section 414(n)(2) for the purposes of the plan qualification requirements listed in Code Section 414(n)(3).

29. "Matching Contributions" means contributions made by the County as specified in Section 5.26.110.

30. "Matching Contributions Account" means an account to which the Matching Contributions allocated to each Participant, and any earnings, investment gains or losses and applicable Plan expenses allocable thereto, are credited.

31. "Participant" means an Eligible Employee or a former Eligible Employee who has become and continues to be a Participant of the Plan in accordance with the provisions of Part 2 of this chapter.

32. "Participant Loan Fund" means the Investment Fund provided for in Section 5.26.310.

33. "Payroll Deduction Authorization Agreement" means the one-time, binding and irrevocable agreement by which an Eligible Employee elects to make a Termination Pay Contribution to the Plan, which satisfies the requirements specified in Section 5.26.175.

34. "Plan" means the County of Los Angeles Savings Plan, the terms and provisions of which are herein set forth, as the same may be amended, supplemented or restated from time to time.

35. "Plan Year" means a calendar year.

36. "QDRO" means a "qualified domestic relations order," which is a domestic relations order that the Administrative Committee has determined satisfies the requirements of a qualified domestic relations order as defined in Code Section 414(p)(1) and is consistent with the terms of this Plan.

37. "Qualified Plan" means an employee benefit plan that is qualified under Section 401(a) of the Code.

38. "Rollover Contributions" means contributions received by the Plan pursuant to Section 5.26.610A.

39. "Rollover Contributions Account" means an account to which the Rollover Contributions received on behalf of each Participant, and any earnings, investment gains or losses and applicable Plan expenses allocable thereto, are credited.

40. "Salary Deduction Agreement" means an agreement pursuant to which an Employee agrees to have an amount deducted from his Eligible Earnings, on an after-tax basis, and the County agrees to contribute to the Plan the amount deducted as an After-Tax Contribution.

41. "Severance Date" means the date upon which an Eligible Employee or a Participant terminates employment with the County for any reason.

42. "Tax Deferred Contributions" means contributions made by the County pursuant to a Compensation Deferral Agreement as specified in Section 5.26.060. Effective on or after January 1, 2002, such term shall also include any Catch-Up Contributions made to the Plan on behalf of a Participant as specified in Section 5.26.060B.

43. "Tax Deferred Contributions Account" means an account to which the Tax Deferred Contributions and, effective January 1, 2002, Catch-Up Contributions, subject to any action taken by the Administrative Committee under Section 5.26.190 to establish a separate account or subaccount for such Catch-Up Contributions, made for each Participant, and any earnings, investment gains or losses and applicable Plan expenses allocable thereto, are credited.

44. "Termination Pay" means the amount paid to a Participant upon termination of County employment as a redemption of unused accrued benefits as provided in Los Angeles County Code Section 6.24.040A or as leaving vacation described in Los Angeles County Code Section 6.18.070C (these accrued benefits commonly referred to as "Time Certificates"). The Termination Pay taken into account for all purposes under the Plan shall be limited in accordance with Code Section 401(a)(17).

45. "Termination Pay Contribution" means a contribution made by a Participant pursuant to a Payroll Deduction Authorization Agreement, as specified in Section 5.26.173.

46. "Termination Pay Contribution Account" means an account to which the Termination Pay Contribution made for each Participant, and any earnings, investment gains or losses and applicable Plan expenses allocable thereto, is credited.

47. "TPA" means a third-party administrator who has entered into a contract with the County to provide record-keeping or other administrative services for the Plan.

48. "Trial Court Act" means the Trial Court Employment Protection and Governance Act, California Government Code Section 71600 et seq.

49. "Trial Court Employee" means a "trial court employee," as defined under the Trial Court Act, who is an Eligible Employee.

50. "Trial Court Entity" means each Los Angeles County Municipal Court, Los Angeles County Superior Court, and each unified, successor trial court entity (or portion thereof) established in the County pursuant to California Government Code Section 70200 et seq.

51. "Trust Agreement" means any agreement between the County and a Trustee as in effect from time to time.

52. "Trustee" means any person that is a custodian or trustee and that is appointed by the Board of Supervisors of the County to hold and administer some or all of the assets of the Plan pursuant to Part 8 of this chapter.

53. "Valuation Date" means the date with respect to which the value of the Plan assets or any portion thereof is determined. Unless otherwise determined by the Administrative Committee, a Valuation Date occurs each day.

54. "Year of Service" means an Employee shall be credited with a Year of Service for each Plan Year (including the Plan Year commencing September 1, 1984, and ending December 31, 1984) in which he is employed by the County and is a Participant in the Plan or in the Horizons Plan.



#### **5.26.030. Construction.**

A. Unless the context otherwise indicates, the masculine wherever used herein shall include the feminine and neuter, the singular shall include the plural and words such as "herein," "hereof," "hereby," "hereunder," and words of similar import refer to the Plan as a whole and not to any particular part thereof.

B. Where headings have been supplied to portions of the Plan they have been supplied for convenience only and are not to be taken as limiting or extending the meaning of any of its provisions.

C. Wherever the word "person" appears in the Plan, it shall refer to both natural and legal persons.

D. Except to the extent federal law controls, the Plan shall be governed, construed and administered according to the laws of the State of California. All persons accepting or claiming benefits under the Plan shall be bound by and deemed to consent to its provisions.

#### **5.26.033. Special Rules Regarding Participating Employers.**

A. Generally. Notwithstanding the general definition of County in Section 5.26.020, with regard to rights and obligations related to the design, amendment, termination or administration of the Plan, including but not limited to those set forth in Parts 8, 9 and 11, the term "County shall refer exclusively to the County of Los Angeles, and each other employer participating in this Plan shall be bound by the actions of the County of Los Angeles.

B. Trial Court Entities. Generally effective January 1, 2001, the Trial Court Act recognizes the Trial Court Entities as separate, successor employers for certain purposes, and provides that, if permitted by federal law, Trial Court Employees shall continue to be eligible to receive deferred compensation benefits under the Plan unless otherwise elected by their respective Trial Court Entities. Accordingly, if Trial Court Employees participate in the Plan on and after January 1, 2001, then, on and after that

date, any Compensation Deferral Agreements in effect for such Trial Court Employees shall be deemed to be made under a separate cash or deferred arrangement with the Trial Court Entity that employs them, and any County Contributions made to the Plan on behalf of such Trial Court Employees shall be paid out of the budget of their respective Trial Court Entity. In addition, a Payroll Deduction Authorization Agreement executed by a Trial Court Employee shall be between such Trial Court Employee and the Trial Court Entity that employs him, and any Termination Pay Contribution made to the Plan on behalf of such Trial Court Employee shall be paid out of the budget of such Trial Court Entity.

**5.26.035. Limitation on Compensation and Eligible Earnings.**

A. For Plan Years beginning before January 1, 2002 and notwithstanding any provision in the Plan to the contrary or any other law, for any Eligible Employee who becomes a Participant in this Plan on or after January 1, 1996, the annual Compensation, and Eligible Earnings taken into account for all purposes under the Plan shall be limited to \$150,000.00 as adjusted for the calendar year to reflect increases in the cost-of-living in accordance with Code Sections 401(a)(17)(B) and 415(d).

B. For Plan Years beginning on or after January 1, 2002, and notwithstanding any provision in the Plan to the contrary or any other law, for any Eligible Employee who becomes a Participant in this Plan on or after January 1, 1996, the annual Compensation, and Eligible Earnings taken into account for all purposes under the Plan shall be limited to \$200,000.00 as adjusted for the calendar year to reflect increases in the cost-of-living in accordance with Code Sections 401(a)(17)(B) and 415(d).

## **PART 2 PARTICIPATION**

### **5.26.040. Commencement of Participation.**

A. An Eligible Employee may become a Participant by entering into a Compensation Deferral Agreement or, effective as of January 1, 2002, a Salary Deduction Agreement before an Entry Date. Such an Eligible Employee's participation shall become effective with respect to Eligible Earnings payable for services rendered to the County on and after the next Entry Date following the date the Compensation Deferral Agreement or Salary Deduction Agreement is entered into.

B. An Eligible Employee who does not enter into a Compensation Deferral Agreement or Salary Deduction Agreement may become a Participant by entering into a Payroll Deduction Authorization Agreement as provided in Section 5.26.175; provided, however, that an Eligible Employee who becomes a Participant pursuant to this subsection B shall cease to be a Participant immediately upon his termination of employment with the County in the event that (i) he is not entitled to a Termination Pay Contribution upon termination of employment with the County, and (ii) no portion of the Investment Fund is credited to his Account and held for his benefit as of his Severance Date.

### **5.26.050. Duration of Participation.**

An Employee or former Employee shall remain a Participant so long as (1) he is an Eligible Employee covered by a Compensation Deferral Agreement or Salary Deduction Agreement, or (2) a portion of the Investment Fund is credited to his Account and held for his benefit by the Trustee. However, a Participant who ceases to be an Eligible Employee who is covered by a Compensation Deferral Agreement or a Salary Deduction Agreement may have no County Contributions made for him until he again commences participation pursuant to Section 5.26.040.

#### **5.26.055. Leased Employees.**

A. Inclusion as Employee. A Leased Employee shall be treated as an Employee only for the purposes of the plan qualification requirements listed in Code Section 414(n)(3).

B. Exception. Subsection A shall not apply to any Leased Employees if the safe harbor set forth in Code Section 414(n)(5) applies.

### **PART 3 TAX DEFERRED CONTRIBUTIONS**

#### **5.26.060. Tax Deferred Contributions.**

A. Subject to the limitations contained in Sections 5.26.100A, B or C, 5.26.160 and 5.26.170, a Participant may, pursuant to a Compensation Deferral Agreement, have the County deduct from his Eligible Earnings and contribute to the Plan a percentage or dollar amount of his Eligible Earnings during any Plan Year; provided, however, that for any period, the Participant may not deduct from and defer any amount that: (i) would not be received as taxable cash but for the Compensation Deferral Election; or (ii) would not constitute Eligible Earnings even if received as taxable cash. Moreover, the Participant's Eligible Earnings for each pay period will be reduced on a pre-tax basis in the following order: (i) first, any pre-tax contributions to LACERA; (ii) second, if the Participant participates in one of the flexible benefit plans under Chapters 5.27, 5.28, 5.33 or 5.37 of the Los Angeles County Code, by the amount of any contributions under such plans that otherwise would have constituted Eligible Earnings; (iii) third, if a participant also participates in the Pension Savings Plan, for the amount of any Supplemental Deferred Compensation Contributions (as defined in the Pension Savings Plan) that otherwise would have constituted Eligible Earnings; (iv) fourth, Tax Deferred Contributions to this Plan; and (v) fifth, if a Participant also participates in the Horizons Plan, by an amount to satisfy the Participant's Participation Agreement under Horizons Plan.

B. Effective as of January 1, 2002, a Participant who has attained the age of 50 or older before the close of any Plan Year and is eligible to make Tax Deferred Contributions under the Plan shall be eligible to have the County make Catch-Up Contributions to the Plan from his or her Eligible Earnings during such Plan Year in excess of the Code limitations set forth in Section 5.26.100B, Section 5.26.160 or comparable limitations or restrictions contained in the terms of this Plan, provided; however, that such Catch-Up Contributions may not exceed the limitations contained in Section 5.26.100E. A participant who has elected to be subject to Section 5.26.100C (or is treated as having so elected) shall not be eligible to have the County make a Catch-Up Contribution on his or her behalf.

**5.26.065. After-Tax Contributions.**

Subject to the limitations contained in Sections 5.26.160, effective as of January 1, 2002, a Participant may, pursuant to a Salary Deduction Agreement, have the County deduct from his Eligible Earnings and contribute to the Plan a percentage or dollar amount of his Eligible Earnings during any Plan Year.

**5.26.070. Payments to Trustee.**

Each Participant's Eligible Earnings shall be reduced each pay date pursuant to his authorization on a Compensation Deferral Agreement and Salary Deduction Agreement (if any) and the resulting Tax Deferred Contributions and After-Tax Contributions shall be transmitted by the County to the Trustee and credited to the Participant's Account within a period that is not longer than is reasonable for the proper administration of the accounts of Participants, but in no event later than the 15th business day of the month following the month in which the Participant's Tax Deferred Contributions or After-Tax Contributions otherwise would have been payable to such Participant in cash.

#### **5.26.080 Changes in Tax Deferred Contributions, or After-Tax Contributions.**

The percentage or dollar amount designated by a Participant pursuant to Sections 5.26.060 and 5.26.065 shall continue in effect, notwithstanding any changes in the Participant's Eligible Earnings. A Participant may, however, in accordance with Section 5.26.060 or Section 5.26.065 as applicable, change the percentage or dollar amount of the Tax Deferred Contributions or After-Tax Contributions that are being made for him once each month by giving prior written notice of such change to the Administrative Committee, in accordance with procedures established by the Administrative Committee, effective with respect to Eligible Earnings payable for services rendered to the County on and after the Entry Date following the date such notice is filed.

#### **5.26.090. Suspension of Tax Deferred Contributions or After-Tax Contributions.**

By giving prior written notice thereof to the Administrative Committee in accordance with procedures established by the Administrative Committee, a Participant may suspend the Tax Deferred Contributions or After-Tax Contributions that are being made for him at any time effective with respect to Eligible Earnings payable for services rendered to the County on or after the Entry Date following the date such notice is filed. A Participant who has suspended the Tax Deferred Contributions or After-Tax Contributions that were being made for him may again have such contributions made for him by giving prior written notice of such change to the Administrative Committee in accordance with procedures established by the Administrative Committee (which procedures may include, at the sole discretion of the Administrative Committee, the filing of a new Compensation Deferral Agreement or Salary Deduction Agreement, as applicable, with the Administrative Committee in accordance with Section 5.26.040), effective with respect to Eligible Earnings payable for services rendered to the County on and after the Entry Date following the date such notice is filed.

#### **5.26.100. Dollar Limitations.**

A. For calendar years beginning prior to January 1, 2002, and notwithstanding any other provision of the Plan, the amount of the Tax Deferred Contributions pursuant to a Participant's Compensation Deferral Agreement for any calendar year shall not exceed \$7,000.00 adjusted for the calendar year to reflect the increases in cost-of-living in accordance with Code Sections 402(g) and 415(d) (the "Deferral Limit"); provided, however, that if the Participant also participates in the Horizons Plan, then a combined Deferral Limit of \$7,500.00 (as adjusted for the calendar year to reflect increases in the cost-of-living in accordance with Code Sections 457(e)(15) and 415(d)) applies to the aggregate for the Plan Year of the Participant's Tax Deferred Contributions under this Plan and the Participant's contributions (both "Deferred Compensation Contributions" and "Matching Contributions") under the Horizons Plan.

B. For calendar years beginning on or after January 1, 2002, the amount of Tax Deferred Contributions pursuant to a Participant's Compensation Deferral Agreement for any calendar year shall not exceed the following applicable dollar amounts: (a) \$11,000 in 2002, (b) \$12,000 in 2003, (c) \$13,000 in 2004, (d) \$14,000 in 2005, and (e) \$15,000 in 2006 and thereafter. For Plan Years beginning on or after January 1, 2007, the \$15,000 applicable dollar limit shall be adjusted for the calendar year to reflect the increases in cost-of-living in accordance with Code Sections 402(g)(4) and 415(d). The dollar limits set out in this Section 5.26.100B constitute the "Deferral Limits" for such applicable calendar year. Catch-Up Contributions made pursuant to Section 5.26.060B and Code Section 414(v) are not taken into consideration for purposes of determining the Deferral Limit for a calendar year. This subsection B shall not apply to any Participant who elects, pursuant to a Compensation Deferral Agreement or in accordance with the procedures of Sections 5.26.080 or 5.26.090, to be subject to the Combined Limit as defined in subsection C of this Section 5.26.100 or is treated as having so elected pursuant to Section 5.26.100C.

C. For calendar years beginning on or after January 1, 2002, any Participant who also participates in the Horizons Plan and elects to be covered by this subsection C (or is treated as having so elected) shall be subject to the following combined limit: The combined Deferral Limit as determined under Section 5.26.100A for the 2001 calendar year shall apply to the aggregate for the calendar year of the Participant's Tax Deferred Contributions under this Plan and the Participant's contributions (both "Deferred Compensation Contributions" and "Matching Contributions") under the Horizons Plan. The dollar limits provided for in this Section 5.26.100C constitute the "Combined Limit" for such applicable calendar year. Any Participant who elects to be covered by this subsection C (or is treated as having so elected) will be precluded from making any catch-up contributions under Code Section 414(v) to this Plan or Horizons for such calendar year. This subsection C shall not apply to any Participant who elects, pursuant to a Compensation Deferral Agreement, or in accordance with the procedures of Sections 5.26.080 or 5.26.090, to be subject to the Deferral Limit under subsection B of this Section 5.26.100. Any Participant who as of December 31, 2001 also participated in Horizons shall be treated as having elected to be covered by the Combined Limit under Section 5.26.100C until such time as the Participant elects, in accordance with the procedures of Sections 5.26.080 and 5.26.090, to be subject to the Deferral Limits under Section 5.26.100B.

D. If, for any calendar year, the amount of the Tax Deferred Contributions pursuant to a Participant's Compensation Deferral Agreement does exceed the Deferral Limit, the excess amount of such Tax Deferred Contributions (and any earnings thereon calculated from the date contributed to the Plan to the date distributed) shall be distributed to the Participant in cash no later than April 15th of the next following calendar year.

E. For calendar years beginning on or after January 1, 2002, the amount of Tax Deferred Contributions treated as Catch-Up Contributions for any calendar year shall not exceed the lesser of (a) the following applicable dollar amounts: (1) \$1,000 in



2002, (2) \$2,000 in 2003, (3) \$3,000 in 2004, (4) \$4,000 in 2005, and (5) \$5,000 in 2006 and thereafter; or (b) the excess, if any, of the Participant's 415 Compensation over any other elective deferrals made by the Participant for such year (other than catch-up contributions made pursuant to Code Section 414(v)). For Plan Years beginning on or after January 1, 2007, the \$5,000 applicable dollar limit shall be adjusted for the calendar year to reflect the increases in cost-of-living in accordance with Code Sections 414(v) and 415(d).

F. For the purposes of applying the Deferral Limit: 1) elective deferrals within the meaning of Code Section 402(g)(3) under any other plan, contract or arrangement of the County shall be treated as made under this Plan; and 2) the "County" includes any entity the employees of which, together with employees of the County, are required to be treated as if they were employed by a single employer under Code Section 414(b), (c), (m) or (o).

#### **PART 4 MATCHING CONTRIBUTIONS**

##### **5.26.110 Amount of Matching Contributions.**

A. Subject to the provisions of the Plan and the Trust Agreement, the County shall contribute to the Investment Funds on account each month an amount equal to four percent (4%) of each Participant's monthly Compensation provided that the year-to-date cumulative Matching Contributions do not exceed such Participant's year-to-date cumulative Tax Deferred Contributions.

B. Notwithstanding any other provision of this Plan or the Horizons Plan, including the limitation in subsection A, for Plan Years beginning before January 1, 2002, when a Participant of this Plan who is also a participant of the Horizons Plan makes the maximum tax deferred contributions permitted by the Code to both plans during a Plan Year, such Participant shall be entitled to have contributed as additional Matching Contributions to this Plan the difference between (1) the total Matching Contributions that would have been made to both plans for such Participant, but for the applicable Deferral Limit described in Section 5.26.100A, and (2) the total Matching

Contributions actually made to both plans, provided that the total contributions to this Plan shall not exceed the total contributions allowed by Section 415 of the Code.

C. Notwithstanding any other provision of this Plan, including the limitation in subsection A, when a Participant of this Plan, who makes no contributions to the Horizons Plan during a Plan Year, makes the maximum Tax Deferred Contributions permitted by the code to this Plan during the same Plan Year, such Participant shall be entitled to have contributed as additional Matching Contributions to this Plan the difference between (1) the total Matching Contributions that would have been made for such Participant to this Plan, but for the applicable Deferral Limit described in Section 5.26.100A or B, and (2) the total Matching Contributions actually made to this Plan, provided that the total contributions to this Plan shall not exceed the total contributions allowed by Section 415 of the code.

D. Notwithstanding any other provision of this Plan or the Horizons Plan, including the limitation in subsection A, for Plan Years beginning on or after January 1, 2002, when a Participant of this Plan who is also a participant of the Horizons Plan (i) has elected to be covered by Section 5.26.100B, (ii) makes the maximum contributions permitted by the code under the Horizons Plan, and (iii) is making Tax Deferred Contributions to this Plan at a rate that will permit the Participant to receive the full Matching Contribution under Section 5.26.110A of this Plan, such Participant shall be entitled to have contributed as additional Matching Contributions to this Plan the difference between (1) the total Matching Contributions that would have been made to both plans for such Participant, but for the applicable limitation under Code Section 457(c) and the Deferral Limit described in Section 5.26.100B, and (2) the total Matching Contributions actually made to both plans, provided that the total Tax Deferred Contributions and Matching Contributions to this Plan shall not exceed the total contributions allowed by Section 415 of the code.

E. Notwithstanding any other provision of this Plan or the Horizons Plan, including the limitation in subsection A, for Plan Years beginning on or after January 1, 2002, when a Participant of this Plan who is also a participant in the Horizons Plan has elected to be covered by Section 5.26.100C (or is treated as having so elected) and makes tax deferred contributions to both plans equal to the Combined Limit under this Plan, such Participant shall be entitled to have contributed as additional Matching Contributions to this Plan the difference between (1) the total Matching Contributions that would have been made to both plans for such Participant, but for the Combined Limit described in Section 5.26.100C, and (2) the total Matching Contributions actually made to both plans, provided that the total Tax Deferred Contributions and Matching Contributions to this Plan shall not exceed the total contributions allowed by Section 415 of the code.

#### **5.26.120 Payments to Trustee.**

Matching Contributions shall be paid to the Trustee in cash at least monthly and shall be based upon the amount of Tax Deferred Contributions made during the month for which such Matching Contributions are made. Any other provision herein to the contrary notwithstanding, if it appears to the Administrative Committee that the County will not be able to make Matching Contributions for a Plan Year or any part thereof because it appears there will not be sufficient Net Revenues, the County shall cease making Matching Contributions for such Plan Year on a monthly basis and shall make Matching Contributions, if any, within 30 days after the amount, if any, of Net Revenues for such Plan Year is determined.

If the amount of Matching Contributions for a Plan Year exceeds the amount which may be contributed to the Plan in accordance with Section 5.26.110 (except in the case of a mistake of fact covered by Section 5.26.150B), to the extent permitted by applicable law, such excess Matching Contributions shall be forfeited, placed in a suspense account and applied in accordance with Section 5.26.338.

#### **5.26.130. Allocation of Matching Contributions.**

Matching Contributions shall be allocated and credited each month to the Matching Contributions Account of each Participant for whom Tax Deferred Contributions are made during such month, with each such Participant receiving a portion of the Matching Contributions equal to the amount calculated according to the provisions of Section 5.26.110. In the event that Matching Contributions are insufficient to provide each Participant with his fully allocated portion as provided in the preceding sentence, the Matching Contributions that are made shall be allocated proportionally to the Matching Contributions Account of each Participant in a manner consistent with such sentence.

#### **5.26.140. Reduction of Matching Contributions.**

The amount of Matching Contributions determined to be payable to the Investment Funds pursuant to this Part 4 shall be reduced first in accordance with the provisions of Section 5.26.160C (with respect to amounts held in a suspense account) and then in accordance with Section 5.26.338.

#### **5.26.150. Return of Contributions to County.**

A. Except as provided in subsection B of this Section 5.26.150 or in Section 5.26.120, 5.26.140 or 5.26.540, the Investment Funds shall never inure to the benefit of the County and shall be held for the exclusive purpose of providing benefits to Participants and their Beneficiaries and defraying reasonable expenses of administering the Plan.

B. If any County Contribution is made by the County due to a mistake of fact, such contribution (but not the earnings thereon) shall, to the extent permitted by applicable law, at the direction of the Administrative Committee, be returned to the County within one year after it is made; if such contribution constituted a Tax Deferred Contribution, After-Tax Contribution, Termination Pay Contribution or Rollover Contribution, it shall thereafter be returned to the Participant to the extent permitted by applicable law. Additionally, if the Plan, or a portion thereof, is determined by the

Internal Revenue Service not to satisfy the requirements of Code Sections 401(a) and 401(k) for a qualified governmental plan containing a cash or deferred arrangement, any County Contributions attributable to that portion of the Plan that is determined to not be so qualified, and attributable to the period for which it is determined to not be so qualified, shall, at the direction of the Administrative Committee, be returned to the County.

**5.26.160. Provision Pursuant to Code Section 415(c).**

A. Definitions. For the purposes of this Section 5.26.160 and Section 5.26.170, the following definitions apply:

1. "Annual Addition" means the sum of the following amounts: (a) all contributions made by the County that are allocated to a Participant's account under a qualified defined contribution plan maintained by the County, (b) all contributions made by the Participant to a qualified defined contribution plan maintained by the County, (c) all forfeitures allocated to a Participant's account under a qualified defined contribution plan maintained by the County, and (d) any amount allocated to an individual medical benefit account (as defined in Code Section 415(l)(2)) of a Participant that is part of a pension or annuity plan maintained by the County (except that the 25 percent of 415 Compensation limit, or, for Limitation Years beginning on or after January 1, 2002, the 100 percent of 415 Compensation limit, does not apply to such an individual medical benefit account).

2. "County" means any entity the employees of which, together with employees of the County, are required to be treated as if they were employed by a single employer under Code Sections 414(b), (c), (m) or (o) (taking into account any adjustment made pursuant to Code Section 415(h)), and any entity whose employees are treated as employees of the County under Code Section 414(n).

3. "Limitation Year" means the twelve consecutive month period used by a Qualified Plan for the purposes of computing the limitations on benefits and annual additions under Code Section 415. The Limitation Year for this Plan is the Plan Year.

B. Limit on Contributions. Notwithstanding any other provisions of the Plan for Limitation Years beginning before January 1, 2002, the Annual Addition for a Participant for any Limitation Year shall in no event exceed the lesser of (a) \$30,000.00 or such higher adjusted amount as shall be prescribed by the Secretary of the Treasury pursuant to Code Section 415(d) to reflect increases in the cost of living, or (b) 25 percent of the Participant's 415 Compensation during the Plan Year. For Limitation Years beginning on or after January 1, 2002, except to the extent permitted under Section 5.26.060B regarding Catch-Up Contributions and Code Section 414(v), the Annual Addition for a Participant for any Limitation Year shall not exceed the lesser of (y) \$40,000, as adjusted for increases in the cost-of-living under Code Section 415(d), or (z) 100 percent of the Participant's 415 Compensation for the Plan Year.

C. Excess Annual Additions. If a Participant's Annual Additions would exceed the limitations of subsection B for a Limitation Year, After-Tax Contributions (if any) made by the Participant for such Plan Year (together with any gains attributable thereto) shall be returned to him to the extent necessary to satisfy the limitations of subsection B. If return of such After-Tax Contributions is insufficient to cause the limitations of subsection B to be satisfied, as soon as practicable following the Limitation Year a portion of the Termination Pay Contribution (if any) made for such Participant for such Limitation Year (together with gains attributable thereto) shall be treated as an Employee contribution not eligible to be picked up under Part 5 and returned to him as a corrective disbursement to the extent necessary to satisfy the limitations of subsection B. If return of such Termination Pay Contribution is insufficient to cause the limitations of subsection B to be satisfied, Matching Contributions allocable to such Participant's Account for such Limitation Year shall, to the extent necessary to cause the limitation in subsection B to be satisfied, be held in a suspense account and used to reduce

Matching Contributions for the next Limitation Year for that Participant if such Participant is covered by the Plan at the end of such Limitation Year; and if he is not covered by the Plan at the end of any such Limitation Year, the Matching Contributions held in the suspense account shall be allocated and reallocated pro rata (based on each Participant's Eligible Earnings) to the Accounts of other Participants, except that such allocation or reallocation shall not cause the limitations of subsection B to be exceeded for any other Participant for any other Limitation Year. Investment gains and losses shall not be allocated to the suspense account during the period such suspense account is required to be maintained. In the event of the termination of this Plan while there exists a balance in the suspense account, to the extent such balance cannot be allocated to Participant's Account without violating the limitations of this section, such balance shall revert to the County. If the allocation of Matching Contributions to the suspense account as described herein is not sufficient to cause the limitations of subsection B to be satisfied, Tax Deferred Contributions (other than Catch-Up Contributions) made for such Participant for such Limitation Year (together with gains attributable thereto) shall be returned to him to the extent necessary to satisfy the limitations under subsection B. In the event a reduction is necessary to satisfy subsection B, and the Participant participates in two or more defined contribution plans maintained by the County, the excess amount to be reduced will be deemed to consist of the Annual Addition last allocated. If an excess amount was allocated to a Participant on an allocation date of this Plan that coincides with an allocation date of another plan, the excess amount attributed to this Plan (to be reduced as provided above) will be the product of (1) the total excess amount allocated as of such date, and (2) the ratio of the Annual Addition allocated to the Participant for the Limitation Year under this Plan to the total Annual Additions allocated to the Participant for the Limitation Year for this and all other qualified defined contribution plans.

D. Aggregation of Plans. For the purposes of applying the limitations set forth in this Section 5.26.160 and Section 5.26.170, all qualified defined benefit plans (whether or not terminated) ever maintained by the County shall be treated as one

defined benefit plan, and all qualified defined contribution plans (whether or not terminated) ever maintained by the County shall be treated as one defined contribution plan.

**5.26.170. Provision Pursuant to Code Section 415(e).**

Notwithstanding any other provision of the Plan, in the case of a Participant who is also a participant in any defined benefit plan qualified under Code Section 401(a), whether or not terminated, maintained by the County, the sum of the defined contribution plan fraction (as determined under Code Section 415(e)(3)) and the defined benefit plan fraction (as determined under Code Section 415(e)(2)) for any Limitation Year (as defined in Section 5.26.160A) shall in no event exceed 1.0. In the event a reduction is necessary to avoid exceeding the limitation set forth in this section, the affected Participant's Annual Additions (as defined in Section 5.26.160A) under this Plan shall be reduced to the extent necessary to avoid exceeding such limitation in accordance with the procedures set forth in Section 5.26.160C. This Section 5.26.170 shall be inapplicable for Plan Years beginning on and after January 1, 2000.

**PART 5 TERMINATION PAY CONTRIBUTION**

**5.26.173. Amount of Contribution.**

Subject to the limitations contained in Section 5.26.160, effective [\_\_\_\_], an Eligible Employee (including an Eligible Employee who has already become a Participant pursuant to Section 5.26.040A) may, pursuant to a Payroll Deduction Authorization Agreement, elect to have the County deduct a fixed percentage or dollar amount from his Termination Pay and contribute such fixed percentage or dollar amount to the Plan pursuant to a Payroll Deduction Authorization Agreement. The County shall pick up such contribution under Code Section 414(h)(2).

**5.26.175. Pick Up Requirements.**

A. An Eligible Employee shall enter into a Payroll Deduction Authorization Agreement in accordance with procedures established by the Administrative Committee.



B. The Payroll Deduction Authorization Agreement is binding and irrevocable upon execution. A Payroll Deduction Authorization Agreement is deemed executed on the date the completed, signed Agreement is filed with the County or its agent. Once executed, the Payroll Deduction Authorization Agreement may not be amended or revoked. An Eligible Employee who executes a Payroll Deduction Authorization Agreement shall thereafter have no option to receive in cash, or to otherwise direct the disposition of, the fixed percentage or dollar amount of his Termination Pay that he has elected to contribute to the Plan as a Termination Pay Contribution. However, executing a Payroll Deduction Authorization Agreement shall have no affect on an Eligible Employee's ability to utilize any accrued benefits by taking vacation, sick or other leave while employed with the County.

C. Except as otherwise provided in this Section 5.26.175, a Payroll Deduction Authorization Agreement must be executed at least 90 days prior to the Eligible Employee's Severance Date. The Payroll Deduction Authorization Agreement is effective upon execution. The Payroll Deduction Authorization Agreement, however, shall not apply to any Termination Pay that becomes payable in the event the Eligible Employee's Severance Date is less than 90 days after the Payroll Deduction Authorization Agreement is executed, unless the Eligible Employee experiences an Involuntary Early Severance. If the Eligible Employee's Severance Date occurs later than originally designated, the Payroll Deduction Authorization Agreement will remain effective until his actual Severance Date.

D. If a Participant is rehired by the County after his Severance Date, any Termination Pay Contribution made on his behalf to the Plan shall remain in the Plan unless and until distributed in accordance with Part 7, and the cashed out accrued benefits attributable thereto shall not be restored for any reason.

E. Each Eligible Employee shall be eligible to make only one election to have Termination Pay picked up within the meaning of Code Section 414(h)(2). Accordingly, an Eligible Employee may not execute more than one Payroll Deduction Authorization

Agreement. If the Eligible Employee intends to have a portion of his Termination Pay picked up and contributed to purchase service with LACERA and a portion of his Termination Pay picked up and contributed to the Plan, he must execute a single Payroll Deduction Authorization Agreement covering both elections. If the Eligible Employee elects to contribute Termination Pay both to LACERA and to the Plan, his Termination Pay will be picked up and contributed first to LACERA, in satisfaction of the election to purchase additional retirement credit under the Payroll Deduction Authorization Agreement, and second to the Plan, in satisfaction of the election to contribute to the Plan under the Payroll Deduction Authorization Agreement. In no event, will the Termination Pay Contribution under the Plan exceed the amount of Termination Pay available after deduction therefrom to make contributions to LACERA in accordance with the Payroll Deduction Authorization Agreement.

F. Termination Pay Contributions made pursuant to this Part 5, although designated under the Plan as employee contributions, shall be paid by the County in lieu of employee contributions.

G. The Payroll Deduction Authorization Agreement shall be executed by the Eligible Employee and shall provide that such Eligible Employee authorizes the appropriate deduction from his Termination Pay for the purposes of having it picked up and contributed to the Plan by the County, and that the Eligible Employee understands and acknowledges the requirements and limitations of this Section 5.26.175.

H. As a condition to entering the Payroll Deduction Authorization Agreement, the County may require an employee to execute a release from liability for any adverse consequences that may result if the Internal Revenue Service or a court determines that a contribution to the Plan pursuant to a Payroll Deduction Authorization Agreement is not a picked up contribution within the meaning of Code Section 414(h)(2), or that the Plan is not a Qualified Plan.

#### **5.26.178. Payment to Trustee.**

Each Termination Pay Contribution shall be paid by the County to the Trustee within a reasonable period after a Participant's Severance Date, but in no event later than the last day of the month following the month containing the Participant's Severance Date or the final calculation of the amount of the Termination Pay by the County, whichever is later.

### **PART 6 INVESTMENTS**

#### **5.26.180. Investment of Funds.**

A. County Contributions shall be allocated to the Investment Funds as specified under Sections 5.26.200 and 5.26.210. Subject to the other applicable provisions of the Plan and the Trust Agreement, the Trustee shall hold, manage, administer, value, invest, reinvest, account for and otherwise deal with each Investment Fund separately. The Trustee or Investment Manager shall invest and reinvest the principal and income of each Fund and shall keep each such Fund invested, without distinction between principal and income, in such property, investments and securities as the Investment Manager for such Fund may deem to be suitable and in accordance with the requirements for such fund specified by the Administrative Committee upon its creation.

B. Dividends, interest and other distributions received in respect of each Investment Fund shall be reinvested in the same fund in accordance with the provisions of the Trust Agreement.

C. The Trustee, in its sole discretion, may keep such portion of each Investment Fund in cash or cash equivalents either pending the selection and purchase of suitable investments under such Fund or as the Trustee may from time to time deem to be necessary or advisable to maintain sufficient liquidity to meet the obligations of the Plan or for other reasons.

#### **5.26.190. Account.**

Each Participant shall have established for him a Tax Deferred Contributions Account, an After-Tax Contributions Account, a Termination Pay Contribution Account, a Rollover Contributions Account and a Matching Contributions Account to reflect the Tax Deferred Contributions, After-Tax Contributions, Termination Pay Contribution, Rollover Contributions and Matching Contributions, respectively, that are made for him. On or after January 1, 2002, the Administrative Committee in its discretion may establish a separate account or subaccount (a "Catch-Up Contributions Account") under the Plan for any Catch-Up Contributions for each Participant eligible to make such contributions. Separate records shall be maintained for each Account showing the portion of such Account invested in each Investment Fund and showing the amount of contributions to each such Account, payments and withdrawals therefrom and the amount of income, expenses, gains and losses attributable thereto. Collectively, such Accounts are referred to herein as a Participant's Account and the interest of each Participant hereunder at any time shall consist of his Account balance (as determined in Section 5.26.210) as of the last preceding Valuation Date plus credits and minus debits to such Account since that Valuation Date.

#### **5.26.200. Investment of Contributions.**

##### **A. Investment by Participants.**

1. Each Participant may instruct the Trustee or TPA, as applicable, to allocate his Tax Deferred Contributions, After-Tax Contributions, Termination Pay Contribution, Rollover Contributions and, if his Matching Contributions Account is 100 percent vested and nonforfeitable under Section 5.26.250, Matching Contributions (collectively, "Contributions") among the Investment Funds. A Participant may change the allocation of future Contributions and may transfer past Contributions, adjusted for earnings, gains and losses, and applicable Plan charges, if any, from one Investment Fund to another. A Participant may make investment elections and changes at the time and manner prescribed by procedures established from time to time by the Administrative Committee.

2. In addition, effective October 1, 1999, each Participant likewise may instruct the Trustee or TPA, as applicable, to allocate among the Investment Funds the portion of his or her Matching Contributions Account that is vested and nonforfeitable in accordance with Section 5.26.200A.I.

B. Investment by Administrative Committee. Plan assets that are not invested pursuant to Participant instructions under Section 5.26.200A, including but not limited to Plan assets for which no Participant investment instructions are received, nonvested Matching Contributions that are not subject to Participant instructions under Section 5.26.200A, forfeiture accounts, accumulated fees and unallocated Plan earnings, shall be invested by the Trustee as instructed by the Administrative Committee in one or more Investment Funds as the Administrative Committee in its discretion may determine.

#### **5.26.210. Trust Fund Allocation and Valuation.**

A. Allocation.

1. Except as may otherwise be provided by the Administrative Committee, the assets credited to each Participant's Account shall be allocated among the Investment Funds in accordance with the investment option or options chosen by such Participant or the Administrative Committee, as the case may be, effective no later than the first business day following the business day on which the Trustee or its agent has received appropriate instructions, or such later date as is commercially reasonable under the circumstances.

2. As of each Valuation Date, the net gain or loss of each Investment Fund, determined in accordance with Section 5.26.210B below, shall be allocated by the Trustee or its agent in accordance with the instructions received by the Trustee from the TPA to the Accounts of Participants in such Investment Funds in proportion to the amounts of such Accounts invested in such Investment Fund on such Valuation Date, exclusive of amounts to be credited but including amounts (other than the net loss, if

any, determined pursuant to Section 5.26.210B) to be debited to such Accounts as of such Valuation Date.

B. Valuation.

1. As of the close of business of each Valuation Date, the TPA shall determine or cause to be determined the value of each Investment Fund. The TPA may rely on net asset value calculations, book values and other data with respect to the value of Plan assets held in the Investment Funds furnished to it by the Administrative Committee, Investment Managers, the County Treasurer, custodians or other entities authorized to provide valuation data. The TPA shall communicate such valuation to the Trustee. The TPA shall be responsible for monthly reconciliation of its records with the records of the third-parties from which it receives valuation data.

2. Each such valuation shall be made on the basis of the net gain or loss to each such Investment Fund between the current Valuation Date and the last preceding Valuation Date. The net gain or loss of an Investment Fund shall include realized and unrealized earnings, interest income, dividends actually paid and other income of such Fund during such period, and shall be reduced by expenses paid, if any, that are to be charged to such Investment Fund in accordance with the terms of the Plan and the Trust Agreement. The transfer of funds to or from an Investment Fund, the allocation of Tax Deferred Contributions, After-Tax Contributions, Termination Pay Contributions, Rollover Contributions and Matching Contributions, and payments, distributions and withdrawals from an Investment Fund to provide benefits under the Plan for Participants or Beneficiaries shall not be deemed to be income, expenses or losses of the Investment Fund. A similar valuation shall be made at any other time the TPA, Administrative Committee or its agent deems it appropriate to make such a valuation.

3. Notwithstanding the foregoing, the Administrative Committee or its agent may, in accordance with applicable requirements of applicable law, instruct the TPA to (a) adopt such accounting procedures as the Administrative Committee or its agent

considers appropriate, reasonable and equitable to establish a proportionate crediting of net gain or loss of an Investment Fund and of Contributions made to an Investment Fund as of each Valuation Date, and (b) adopt such other valuation procedures as the Administrative Committee or its agent considers appropriate, reasonable and equitable to determine the value of the Investment Funds. Subject to the TPA's rights and duties under the contract between it and the County, the reasonable and equitable decision of the TPA as to the value of each Investment Fund as of each Valuation Date shall be conclusive and binding upon all Participants and Beneficiaries having any interest, direct or indirect, in such Investment Fund.

C. No Guarantee Against Loss. The County, the Board of Supervisors, the Administrative Committee, the TPA and the Trustee do not guarantee in any manner the Investment Funds or any part thereof against loss or depreciation. All persons having an interest in the Investment Funds shall look solely to such Funds for payment with respect to such interest. The County, the Board of Supervisors, the Administrative Committee, the TPA and the Trustee are not authorized to advise a Participant as to that Participant's selection of Investment Funds, and the fact that designated Investment Funds are available to Participants for investment shall not be construed as a recommendation for the investment of contributions hereunder in all or any of such Funds. The selection of an Investment Fund by a Participant is his or her sole responsibility and shall constitute an exercise of control over the assets of his or her Account. In accordance with California Government Code Section 53213.5, each Participant who so exercises control shall, by such exercise, release and agree, on his or her behalf and on behalf of his or her heirs and beneficiaries, to indemnify and hold harmless the County, the Board of Supervisors, the Administrative Committee, the TPA, the Trustee and any agent, officer or employee of any of them, from and against any claim, demand, loss, liability, costs or expense (including reasonable attorneys' fees) caused by or arising out of such exercise, including without limitation any diminution in value or losses incurred from such exercise.

## **PART 7 DISTRIBUTIONS AND WITHDRAWALS**

### **5.26.240. Distributions Only As Provided.**

A. A Participant or Beneficiary shall only be paid vested benefits under the Plan as provided in this and the following sections of this part. A Participant or Beneficiary who is eligible to receive a distribution under the Plan shall submit an application for benefits to the Administrative Committee, furnishing such information as the Administrative Committee or its duly authorized agent may require.

### **5.26.250. Nonforfeitability.**

Any amount credited to a Participant's Tax Deferred Contributions Account, Catch-Up Contributions Account (if any), After-Tax Contributions Account, Termination Pay Contribution Account and Rollover Contributions Account shall be nonforfeitable and fully vested. Any amount credited to a Participant's Matching Contributions Account shall vest and become nonforfeitable at the rate of 20 percent for each Year of Service completed by such Participant.

### **5.26.260. Distributions on Retirement or Disability.**

A. Notwithstanding the provisions of Section 5.26.250, the entire Account of a Participant whose employment with the County terminates after he is age 70 or qualified for a service retirement benefit under the County Employees Retirement Law of 1937, as amended, if earlier, or whose employment with the county terminates because of Disability, shall be nonforfeitable and fully vested. Such Account shall be paid to the Participant or his Beneficiary, in cash, in accordance with one of the following methods as the Participant determines:

1. A lump-sum payment; or
2. Substantially equal monthly, quarterly, semi-annually or annual installments not extending for a period that is longer than the life of the Participant or the lives of the Participant and his or her designated Beneficiary and the last survivor of them; or



3. Consecutive periodic payments for the life of the Participant or for the lives of the Participant and his or her designated Beneficiary and the last survivor of them; or

4. A combination of the methods of payment described in subsections A1, 2 and 3 of this section.

B. All distributions hereunder shall be made on or begun as soon as administratively practicable after the Participant's application is filed pursuant to Section 5.26.240 and approved by the Administrative Committee. A Participant's election to begin distribution and selection of a payment method shall be irrevocable except as provided in subsection C. For purposes of a distribution, the date that such Participant's interest in an Investment Fund is liquidated or redeemed, partially or in full, to satisfy the distribution application shall be the applicable Valuation Date.

C. Participants whose distributions under this Plan have already begun or who submitted an application to begin distributions may elect to change their previously irrevocable payment elections no more frequently than once in any Plan Year, which election shall be deemed to be made at the time that the benefit election becomes effective. The election shall be made on a form approved by the Administrative Committee and shall be subject to minimum distribution requirements of Code Section 401(a)(9) and the regulations thereunder. This subsection C shall apply to Beneficiaries who are receiving distributions under the Plan pursuant to Section 5.26.270. This subsection C shall not apply to Participants and Beneficiaries whose benefits under the Plan are provided through an annuity purchased from an insurance carrier.

D. Distributions will begin in accordance with Code Section 401(a)(9) and the regulations thereunder and Section 5.26.290 of the Plan. Such provisions shall override any inconsistent distribution option.

#### **5.26.270. Distributions on Death.**

A. Notwithstanding the provisions of Section 5.26.250, if a Participant dies prior to terminating his employment with the County, his entire Account shall be nonforfeitable and fully vested. Such Account shall be paid by the Trustee to the Participant's Beneficiary after the Trustee is notified by the Administrative Committee of the Participant's death.

B. A Participant shall have the right to designate that after his death his Account shall be paid to or for his Beneficiary in accordance with one of the methods set forth in subsection A of Section 5.26.260. Any designation by a Participant of the method of payment of death benefits hereunder may be made, changed or revoked by the Participant in writing in a form prescribed by the Administrative Committee and filed with the Administrative Committee prior to the Participant's death.

C. If a Participant does not expressly designate the method of distribution of his Account, or if such designation is for any reason not effective, such Account shall be paid to or for the Beneficiary in accordance with one of the methods set forth in subsection A of Section 5.26.260 as such Beneficiary, in his or her discretion, shall determine and designate to the Administrative Committee.

#### **5.26.280. Distributions of Vested Interest.**

A. A Participant whose employment with the County terminates for any reason other than the reasons specified in Section 5.26.260 or 5.26.270 shall receive his entire Tax Deferred Contributions Account, Catch-Up Contributions Account (if any), After-Tax Contributions Account (if any), Termination Pay Contribution Account (if any), Rollover Contributions Account (if any) and the portion of his Matching Contributions Account in which he is vested in accordance with Section 5.26.250. The portion of his Matching Contributions Account which is not so vested shall be immediately forfeited. If a Participant forfeits a portion of his Account and he is later rehired by the County, his employment with the County or participation in the Plan after such rehire shall have no effect on the amount of the forfeiture. If such a rehired Participant subsequently

becomes party to another Compensation Deferral Agreement, any Matching Contributions thereafter made by the County and any earnings and investment gains or losses allocable thereto shall be credited to a separate Matching Contributions Account maintained for such Participant and shall vest as provided herein without regard to any Year of Service prior to his rehire.

B. Amounts distributed pursuant to subsection A of this Section 5.26.280 shall be paid in accordance with one of the methods set forth in subsection A of Section 5.26.260 as selected by the Participant.

C. A Participant has not terminated employment with the "County" for the purposes of this Section 5.26.280 when he or she moves to another employer whose Eligible Employees also participate in the Plan.

**5.26.290. Code Section 401(a)(9) Minimum Distribution Requirements.**

A. Prior Plan Provision. With respect to distributions under the Plan made for calendar years beginning prior to January 1, 2003, the following provisions will apply. These prior Plan provisions are preserved in accordance with Revenue Procedure 2002-29.

1. Notwithstanding any other provision hereof to the contrary, distributions under the Plan shall be made in accordance with Code Section 401(a)(9) (including Section 401(a)(9)(G)) and the Treasury Regulations promulgated thereunder (including Section 1.401(a)(9)-2); provided, however, that such provisions shall override the other distribution provisions of the Plan only to the extent that such other Plan provisions provide for a distribution that is less rapid or of a lesser amount than required under such provisions of the Code and Regulations. Nothing contained in this Section 2.26.290 shall be construed as providing an optional form of payment that is not available under the other distribution provisions of Sections 5.26.260 — 280.

2. The entire interest of each Participant under the Plan:

a. ~~Either will be distributed to him not later than his taxable year in which he~~ attains age 70 1/2 or in his taxable year in which he retires from County service, whichever is the later (his "Required Beginning Date"); or

b. Will be distributed, commencing not later than his Required Beginning Date, (i) in accordance with regulations prescribed by the Secretary of the Treasury, over the life of such Participant or over the lives of such Participant and his designated Beneficiary, or (ii) in accordance with such regulations, over a period not extending beyond the life expectancy of such Participant or the life expectancy of such Participant and his designated Beneficiary.

3. Upon the death of a Participant, the following distribution provisions will apply to limit the Beneficiary's ability to delay distributions.

a. If the Participant dies after distribution of his benefit has begun, the remaining portion of his benefit will continue to be distributed at least as rapidly as under the method of distribution being used prior to the Participant's death.

b. If the Participant dies before distribution of his benefit has begun, his entire benefit will be distributed no later than five years after his death, unless an individual who is a designated Beneficiary elects to receive distributions in substantially equal installments over the Beneficiary's life or over a period not extending beyond the life expectancy of the Beneficiary (and, if the Beneficiary is not the Participant's spouse, not extending beyond 15 years in accordance with the distribution options available under Sections 5.26.260 and 5.26.270) beginning no later than December 31 of the calendar year following the calendar year in which the Participant died. If the designated Beneficiary is the Participant's surviving spouse, the date distributions are required to begin is the later of December 31 of the calendar year following the calendar

year in which the Participant died or December 31 of the calendar year in which such Participant would have attained age 70-1/2. If the spouse dies before such payments begin, subsequent distributions will be made as if the spouse had been the Participant.

c. Generally, distributions will be treated as having begun to the Participant for the purposes of this Section 5.26.290 on the employee's Required Beginning Date, even though payments may actually have been made before that date; provided, however, that if distributions irrevocably (except for acceleration) commence to an employee under an annuity contract, distributions will be considered to have begun on the actual commencement date.

4. The Participant (or the Participant's spouse if the Participant dies before distributions have begun) may elect not to recalculate annually the life expectancy of the Participant and the Participant's spouse (other than in the case of a life annuity) in accordance with Code Section 401(a)(9)(D) and the Regulations thereunder. Such election must be made prior to the time of the first required distribution under Code Section 401(a)(9). If the Participant (or spouse if applicable) fails to make such election, life expectancies will be recalculated annually in accordance with the Regulations.

5. 2001 Proposed Regulations. With respect to distributions under the Plan made for calendar years beginning on or after January 1, 2001, the Plan will apply the minimum distribution requirements of Section 401(a)(9) of the Internal Revenue Code in accordance with the regulations under Section 401(a)(9) that were proposed on January 17, 2001, notwithstanding any provision of the Plan to the contrary. This amendment shall continue in effect until the end of the last calendar year beginning before the effective date of final regulations under Section 401(a)(9) or such other date as may be specified in guidance published by the Internal Revenue Service.

B. Generally. The provisions of Section 5.26.290B-G will apply for the purposes of determining required minimum distributions for Distribution Calendar Years beginning January 1, 2003. The requirements of Section 5.26.290B-G will take

precedence over any inconsistent provisions of the Plan. Notwithstanding any provision of the Plan to the contrary, all distributions required under Sections 5.26.260 and 5.26.270 of this Plan will be determined and made in accordance with the Treasury Regulations under Section 401(a)(9) of the Code. The only permissible distribution options under this Plan are a lump sum distribution, equal monthly, quarterly or annual installments not extending over more than 15 years, consecutive periodic payments for the life of the Participant or for the lives of the Participant and his or her spouse to the extent permitted in Section 5.26.260, or minimum monthly distributions calculated in accordance with the rules provided in Section 5.26.290B-G

C. Definitions. For the purposes of Section 5.26.290B-G, the following terms, when used with initial capital letters, shall have the following respective meanings:

1. "Designated Beneficiary": The person who is designated as the Beneficiary as defined in Section 5.26.020.7 of the Plan and is the designated beneficiary under Section 401(a)(9) of the Code and Section 1.401(a)(9)-4 of the Treasury Regulations.

2. "Distribution Calendar Year": A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin under Section 5.26.290D.2 of the Plan. The required minimum distribution for the Participant's first Distribution Calendar Year will be made on or before the Participant's Required Beginning Date. The required minimum distribution for other Distribution Calendar Years, including the required minimum distribution for the Distribution Calendar Year in which the Member's Required Beginning Date occurs, will be made on or before December 31 of that Distribution Calendar Year.

3. "Life Expectancy": Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury Regulations.

4. "Participant's Account Balance": The Account balance as of the last Valuation Date in the calendar year immediately preceding the Distribution Calendar Year (the "Valuation Calendar Year") increased by the amount of any contributions made and allocated or forfeitures allocated to the Account balance as of dates in the Valuation Calendar Year after the Valuation Date and decreased by distributions made in the Valuation Calendar Year after the Valuation Date. The Account balance for the Valuation Calendar Year includes any amounts rolled over or transferred to the Plan either in the Valuation Calendar Year or in the Distribution Calendar Year if distributed or transferred in the Valuation Calendar Year.

5. "Required Beginning Date": The applicable date specified in subsection D below.

D. Time of Distribution.

1. The Participant's entire interest will be distributed, or begin to be distributed no later than the Participant's Required Beginning Date. Except as described in subsection D.2 below, the Required Beginning Date of any Participant shall be the April 1 of the calendar year following the later of (a) the calendar year he terminates employment or (b) the calendar year he attains age 70 1/2.

2. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(a) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, then, unless the election described in subsection D.4 below is made, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 1/2, if later.

(b) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, then, unless the election described in subsection D.4 below is made, distributions to the Designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(c) If there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(d) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this subsection D.2, other than subsection D.2(a), will apply as if the surviving spouse were the Participant.

3. For purposes of Section 5.26.290B-G, unless subsection D.2(d) applies, distributions are considered to begin on the Participant's Required Beginning Date. If subsection D.2(d) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under subsection D.2(a). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under subsection D.2(d), the date distributions are considered to begin is the date distributions actually commence.

4. Notwithstanding the foregoing, if a Participant dies before distributions begin and there is a Designated Beneficiary, distribution to the Designated Beneficiary is not required to begin by the Required Beginning Date specified above if the Participant or the Beneficiary elects, on an individual basis, that the Participant's entire interest will be distributed to the Designated Beneficiary by December 31 of the calendar year containing the fifth anniversary of the Participant's death; provided,



however, that if the Participant's surviving spouse is the Participant's sole Designated Beneficiary and the surviving spouse dies after the Participant but before distributions to either the Participant or the surviving spouse begin, this election will apply as if the surviving spouse were the Participant. The election provided in this subsection D.4 must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin, or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving spouse's) death.

E. Required Minimum Distributions During Participant's Lifetime.

1. During the Participant's lifetime, the minimum amount that will be distributed for each Distribution Calendar Year is the lesser of:

(a) the quotient obtained by dividing the Participant's Account Balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's age as of the Participant's birthday in the Distribution Calendar Year; or

(b) if the Participant's sole Designated Beneficiary for the Distribution Calendar Year is the Participant's spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the Distribution Calendar Year.

2. Required minimum distributions will be determined under this subsection E beginning with the first Distribution Calendar Year and up to and including the Distribution Calendar Year that includes the Participant's date of death.

3. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9) and the Treasury Regulations.

F. Required Minimum Distributions if Participant Dies After Distributions Begin.

1. Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining Life Expectancy of the Participant or the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as follows:

(a) The Participant's remaining Life Expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(b) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, the remaining Life Expectancy of the surviving spouse is calculated for each Distribution Calendar Year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For Distribution Calendar Years after the year of the surviving spouse's death, the remaining Life Expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(c) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining Life Expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

2. No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no Designated Beneficiary (for example, if pursuant to the Plan, the Beneficiary is the Participant's estate) as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining Life Expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

3. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9) and the Treasury Regulations.

G. Death Before Date Distributions Begin:

1. If the Participant dies before the date distributions begin and there is a Designated Beneficiary, then, unless the election described in subsection D.4 above is made, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as provided in subsection F.1, above.

2. If the Participant dies before the date distributions begin and there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

3. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole Designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under

subsection D.2(a), Section 5.26.290B-G will apply as if the surviving spouse were the Participant.

4. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9) and the Treasury Regulations.

#### **5.26.300. Withdrawal of Contributions.**

Upon not less than 30 days prior written notice filed with the Administrative Committee, effective as of the Entry Date following notification of the Trustee and Investment Manager by the Administrative Committee, a Participant who is an Employee may withdraw in cash all or a part of his Account balance as of the immediately preceding Valuation Date as provided and in the order set forth below. Except in cases of Hardship, a Participant may make only two withdrawals pursuant to this Section 5.26.300 per Plan Year.

A. A Participant may withdraw all or a part of his After-Tax Contributions Account (if any).

B. A Participant may withdraw all or a part of his Rollover Contributions Account (if any).

C. A Participant may withdraw all or a part of his Matching Contributions Account in which he has a vested interest but a Participant may not make a withdrawal pursuant to this subsection unless he is either credited with at least 10 Years of Service or such withdrawal is made due to Hardship.

D. A Participant who has withdrawn his entire After-Tax Contributions Account (if any), his entire Rollover Contributions Account (if any) and his entire Matching Contributions Account (to the extent vested) may in addition withdraw all or a part of his Tax Deferred Contributions Account (excluding any earnings credited to such

Account on or after January 1, 1989), provided that the Participant has attained 59 1/2 or demonstrated to the Administrative Committee that he is suffering from Hardship. A withdrawal shall not be permitted for Hardship unless such withdrawal is on account of an immediate and heavy financial need of the Participant and is necessary to satisfy such financial need.

1. The determination of whether a Participant has an immediate and heavy financial need shall be made by the Administrative Committee on the basis of all relevant facts and circumstances. Nevertheless, a withdrawal shall be deemed to be made on account of an immediate and heavy financial need of a Participant if the withdrawal is on account of:

a. Medical expenses described in Section 213(d) of the Code incurred by the Participant, the Participant's spouse, or any of the Participant's dependents (as defined in Section 152 of the Code);

b. The purchase (excluding mortgage payments) of a principal residence of the Participant;

c. The payment of tuition for the next semester or quarter of post-secondary education for the Participant, the Participant's spouse, the Participant's children, or the Participant's dependents;

d. The need to prevent the eviction of the Participant from his principal residence or the foreclosure on the mortgage of the Participant's principal residence; or

e. Any other financial need which the Commissioner of Internal Revenue, through the publication of revenue rulings, notices, and other documents of general applicability, may from time to time designate as a deemed immediate and heavy financial need as provided in Section 1.401(k)-1(d)(2)(iii)(C) of the Treasury Regulations.

2. A withdrawal shall not be treated as necessary to satisfy an immediate and heavy financial need of a Participant to the extent the amount of the withdrawal exceeds the amount required to relieve the financial need or to the extent such need may be satisfied from other resources that are reasonably available to the Participant. The determination of whether the amount of a withdrawal is necessary to satisfy an immediate and heavy financial need shall be made by the Administrative Committee on the basis of all relevant facts and circumstances. Nevertheless, the amount of a withdrawal shall be deemed to be necessary to satisfy an immediate and heavy financial need of a Participant if: (a) the amount of the distribution is not in excess of the amount of the immediate and heavy financial need; (b) the Participant has obtained all distributions (other than hardship distributions) and nontaxable (at the time of the loan) loans available under the terms of this Plan or any other plan maintained by the County or any other employer of the Participant; and (c) the Participant irrevocably elects to suspend all elective contributions and employee contributions under this Plan (e.g., After-Tax Contributions and Tax Deferred Contributions) and all other plans of deferred compensation maintained by the County from the date on which the withdrawal is made until the close of the next following Plan Year. A Participant who withdraws Tax Deferred Contributions in 2001 on account of Hardship, shall be prohibited from making any elective contributions and employee contributions under this Plan (e.g., After-Tax Contributions and Tax Deferred Contributions) and all other plans of deferred compensation maintained by the County until the close of the six-calendar-month period that began on the first day of the month following the date on which the withdrawal is made or January 1, 2002, if later. A Participant who withdraws Tax Deferred Contributions on or after January 1, 2002 on account of Hardship, shall be prohibited from making any elective contributions and employee contributions under this Plan (e.g., After-Tax Contributions and Tax Deferred Contributions) and all other plans of deferred compensation maintained by the County until the close of the six-calendar-month period that began on the first day of the month following the date on which the withdrawal is made.

### **5.26.310. Loans to Participants.**

A. Upon application by a Participant, but subject to such uniform and nondiscriminatory rules as the Administrative Committee may establish and to the provisions of this section, effective January 1, 1986, the Administrative Committee may in its discretion direct the Trustee to make a loan or loans to a Participant from his separate account in the Participant Loan Fund in an amount not exceeding the excess of:

1. The lesser of:

a. \$50,000.00, reduced by the excess (if any) of:

(1) The highest outstanding balance of loans to such Participant from the Plan during the one-year period ending on the day before the date on which such new loan was made,

(2) Over the outstanding balance of loans to such Participant from the Plan on the date on which such new loan was made, or

b. 50 percent of the vested portion of the Participant's Account balance (not including amounts attributable to a Participant's After-Tax Contributions Account);

2. Over the outstanding balance of any other loan or loans from the Plan to the Participant; provided, however, that if 50 percent of the vested portion of the Participant's Account balance (not including any amounts attributable to a Participant's After-Tax Contributions Account) is less than \$10,000.00, the amount in subsection A.1.b of this section shall be the lesser of \$10,000.00 or 80 percent of the vested portion of the Participant's Account balance. The minimum loan that may be made from the Plan is \$2,000.00 (or such other amount determined by the Administrative Committee). All loans hereunder shall be subject to such loan processing fees charged by the Trustee and Investment Manager as are approved by the Administrative Committee, which fees shall be paid by borrowing Participants.

B. As soon as practicable after the receipt of all necessary information and directions from the Administrative Committee to make a loan and prior to making any loan pursuant to subsection A of this section, but in no event later than 30 days after the applicable Valuation Date, the Trustee or Investment Manager shall transfer, in accordance with procedures determined by the Administrative Committee, to the Participant Loan Fund from the assets invested in other Investment Funds allocated to the Account of each borrowing Participant an amount equal to the amount of such Participant's loan, which investment shall be allocated to such Participant's Account; provided, however, that no amount from the Participant's After-Tax Contributions Account shall be transferred to the Participant Loan Fund for the purpose of making a loan to the Participant. The Participant Loan Fund shall be invested solely in loans to Participants made pursuant to this section and shall at all times be at least equal to the total amount of such loans. All interest and principal payments made by such Participant shall be credited to the separate account within the Participant Loan Fund of each Participant who borrows money from the Plan. Except as otherwise provided by the Administrative Committee, as of each Valuation Date all cash in the Participant Loan Fund shall be transferred to the other Investment Funds in accordance with each borrowing Participant's investment choice under Section 5.26.200.

C. Loans made pursuant to subsection A of this section:

1. Shall be secured by the portion of the Participant's Account attributable to vested Matching Contributions and any or all of the following:

a. The portion of the Participant's Account attributable to Tax Deferred Contributions,

b. The portion of the Participant's Account attributable to Rollover Contributions,

c. Such other collateral as the Administrative Committee may require or permit;



2. Shall be available to all Participants on a reasonably equivalent basis that shall not result in discrimination in favor of Employees who are officers or highly compensated within the meaning of Code Section 401; and

3. Shall be evidenced by a promissory note executed by the Participant which provides for:

a. A reasonable rate of interest determined by the Administrative Committee, and

b. For repayment:

(1) Within a specified period of time, which shall not extend beyond five years from the time the loan is made unless the loan proceeds are used to acquire a dwelling, which within a reasonable time is to be used as a principal residence (as determined at the time the loan is made) of the Participant, in which case the promissory note shall provide for repayment within 15 years of the time the loan is made, unless otherwise provided by the Administrative Committee at the time the loan is made, and

(2) In substantially equal payments, at least quarterly, over the term of the loan, and

(3) Upon such other terms and conditions as the Administrative Committee shall determine.

Notwithstanding any other provision of the Plan, including Section 5.26.460, such loan shall be a first lien against the portion of the Participant's Account by which it is secured and any amount of principal or interest due and unpaid thereof shall be deducted insofar as possible from the portion of such Account by which it is secured before the payment of any portion thereof to the Participant or his Beneficiary.

D. Notwithstanding the foregoing provisions of this section, loans made to Participants under the Plan shall be due and payable upon the Participant's termination of employment with the County, whether by death, retirement or otherwise.

**5.26.320. Order of Distributions.**

Unless the Plan provides for a distribution from a specific Account, distributions shall be made first from a Participant's After-Tax Contributions Account before any other Account. Moreover, distributions (including withdrawals) shall be made from the applicable portion of a Participant's Account invested in the Investment Funds on a pro rata basis from each Investment Fund, unless a different order of distribution is directed by the Participant. Each Participant by written notice (in form acceptable to the Administrative Committee) signed by the Participant and filed with the Administrative Committee may direct the order in which distributions are to be made if other than on a pro rata basis.

**5.26.330. Small Accounts.**

Notwithstanding the foregoing provisions of this Part 7, if a Participant's vested Account balance does not exceed \$5,000.00 (determined, on or after January 1, 2002, without regard to a Participant's Rollover Contributions Account) at the time of his termination of employment with the County, it may be paid in a lump sum as soon as practicable following such termination of employment.

**5.26.335. Lost Participants.**

If the Participant or his or her Beneficiary cannot be located within four years of the date the Participant's interest under the Plan is first payable, the entire balance in his or her Account shall be forfeited; provided, however, that the amount so forfeited shall be reinstated as of the date of the subsequent filing of an application for benefits under the Plan, and payment of the lump sum benefit shall occur no later than 60 days after such application is approved by the Administrative Committee.

#### **5.26.338. Application of Forfeitures.**

The amount of Participant's Account which is forfeited for a Plan Year in accordance with Sections 5.26.120, 5.26.280 and 5.26.335 shall be placed in one or more forfeiture accounts held in the Trust Fund and applied first, restore the accounts of lost Participants who have filed an application for benefits that has been approved by the Administrative Committee, if any, and second, to offset future Matching Contributions to be made by the County in accordance with Section 5.26.140. Earnings on the forfeiture accounts held in the Trust Fund shall be used to reduce administrative expenses of the Plan in accordance with Section 5.26.420.

### **PART 8 ADMINISTRATION OF THE PLAN AND TRUST AGREEMENT**

#### **5.26.340. Responsibility for Administration.**

As Administrator, the Administrative Committee shall have sole and exclusive responsibility for the administration of the Plan, including but not limited to the preparation and delivery to the Board of Supervisors, Participants, Beneficiaries and governmental agencies of all information, descriptions and reports required by applicable law. Each other fiduciary shall have such powers, duties and authorities as shall be specified in the Plan or Trust Agreement. The Administrative Committee shall also be responsible for contracting with any private firm selected by the Committee to provide services related to the Plan.

#### **5.26.350. Administrative Committee Procedure.**

A. The chairman of the Administrative Committee shall be the Chief Administrative Officer of the County. The chairman of the Administrative Committee shall select a secretary and may select such other officers as are needed from time to time. The members of the Administrative Committee or their designated representatives may authorize one or more of their number or any duly appointed agent or County employee to carry out action that may be taken by the Administrative Committee.

B. The Administrative Committee shall hold meetings at least quarterly or more often at the call of the chairman. A majority of the members of the Administrative Committee shall constitute a quorum and all action taken by the Administrative Committee shall be by majority vote at a meeting at which a quorum is present. The Administrative Committee shall maintain written minutes of its meetings.

**5.26.360. Authority.**

A. Except as otherwise provided in this Plan or Trust Agreement, the Administrative Committee shall have sole and absolute discretion to administer the Plan, interpret the provisions of the Plan, make factual findings with respect to any issues arising under the Plan and determine the rights and benefits of Participants and other persons under the Plan. The Administrative Committee may adopt rules for the administration of the Plan provided that such rules are not inconsistent with the terms of the Plan, except that the Administrative Committee may modify any notice period required by the Plan or designate any officer to serve as the recipient of any form or notice that has to be filed under the Plan. In addition, the Administrative Committee shall remedy possible ambiguities, inequities or inconsistencies in the Plan and shall correct deficiencies and supply omissions therein. Subject to the provisions of Section 5.26.370, such determinations and findings shall be final and conclusive, to the extent permitted by law, as to all interested persons for all purposes of the Plan. The Administrative Committee shall instruct the Trustee or Contractor as to the benefits to be paid hereunder and shall furnish the Trustee or Contractor with any further information reasonably required by it for the purpose of distributing such benefits and making investments in or withdrawals from one or more of the Investment Funds. The Administrative Committee shall also have the authority to contract with one or more private firms for services related to the Plan, consistent with Section 44.7 of the Los Angeles County Charter and Chapter 2.121 of this County Code.

B. The Chief Administrative Officer shall be responsible for recommendations to the Administrative Committee and/or Board of Supervisors on all matters involving budget, liability and fiduciary insurance, Employee relations, and County policy relating to the Plan. The Chief Administrative Officer shall also be responsible for all Participant contact and services associated with the Plan.

C. The County Counsel shall provide, or contract for, all legal advice or representation required by the Administrative Committee and/or the County and its officers and employees in connection with their administration of the Plan.

D. The Auditor-Controller shall provide or contract for annual audits of the Plan, processing of payroll deductions and County contributions, maintaining appropriate County accounting records, transferring of funds to the Trustee or Investment Managers, and periodic reviews of the financial integrity of the Plan.

E. The Treasurer shall be responsible for recommendations to the Administrative Committee on the administration of all contracts with the Trustee, and investment options.

F. The Administrative Committee may assign additional duties and responsibilities to its members, and may from time to time reassign any of the duties and responsibilities set forth above as it deems appropriate.

G. Each of the above County officers may discharge any duty required by this chapter through any designated deputy or assistant or contractor.

#### **5.26.370. Revocability of Action.**

Any action taken by the Administrative Committee with respect to the rights or benefits under the Plan of any Participant or Beneficiary shall be revocable by the Administrative Committee as to payments, distributions or deliveries not theretofore made hereunder pursuant to such action. Notwithstanding Section 5.26.460, appropriate adjustments may be made in future payments or distributions to a Participant or Beneficiary to offset any excess payment or underpayment theretofore made hereunder to such Participant or Beneficiary.

#### **5.26.380 Employment of Assistance.**

The Administrative Committee may employ such expert communication and enrollment, legal, accounting, investment, trustee, custody, or other assistance as it deems necessary or advisable for the proper administration of the Plan and Investment Funds.

#### **5.26.390. Uniform Administration of Plan.**

All action taken by the Administrative Committee under the Plan shall treat all persons similarly situated in a uniform and consistent manner.

#### **5.26.400. Investment Funds.**

The Investment Funds shall be held by the Trustee for the exclusive benefit of the Participants and their Beneficiaries, and, unless a different Investment Manager has been appointed, shall be invested by the Trustee upon such terms and in such property as is provided in the Plan and in the Trust Agreement. Except as otherwise provided by the Administrative Committee, the Trustee will, from time to time, make payments, distributions and deliveries from the Investment Funds as provided in the Plan. The Trustee in its relation to the Plan shall be entitled to all of the rights, privileges, immunities and benefits conferred upon it and shall be subject to all of the duties imposed upon it under the Trust Agreement. The Trust Agreement is hereby incorporated in the Plan by reference.

#### **5.26.410. Payment of Benefits.**

All payments of benefits provided for by the Plan (less any deductions provided for by the Plan) shall be made solely out of the Investment Funds in accordance with instructions given to the Trustee by the Administrative Committee, and the County shall not be otherwise liable for any benefits payable under the Plan.

#### **5.26.420. Expense Charges to Plan.**

A. With the approval of the Board of Supervisors, expenses incurred as a result of County employees performing the functions defined in Sections 5.26.340 through 5.26.410 may be charged through the Trustee or reimbursed from Plan assets and paid to the County. The expenses so charged will be allocated to the individual Participants' accounts and shall be reflected on quarterly statements. The annual charges shall not exceed the amount approved by the Board of Supervisors in the County budget, and will only include direct, additional County costs.

B. Expenses incurred by members of the Administrative Committee as a result of performing their duties under the Plan will be charged through the Trustee or reimbursed from Plan assets and paid to the member incurring such expense. Such expenses may include the costs of educational materials or classes relating to plan administration or investments if the Administrative Committee determines that such costs are reasonable and necessary.

C. Expenses incurred as a result of contractors performing the Plan functions described in Sections 5.26.340 through 5.26.410, TPA and Trustee fees, and the cost of fiduciary and liability insurance, are limited by the contract or contracts approved by the Administrative Committee or the Board of Supervisors, and will be charged through the Trustee or reimbursed from Plan assets and paid to the County. The expenses, fees and costs so charged will be allocated to the individual Participants' accounts and shall be reflected on quarterly statements.

D. In the event that the Plan accumulates (1) fees in excess of actual administrative expenses, or (2) unallocated earnings from Plan operations, the Administrative Committee shall allocate excess fees and earnings first by establishing a reserve for contingencies and payment of planned obligations not to exceed one-half of the total annual County fees charged to Participants, and then by allocating any remainder by reducing TPA fees charged to Participants by a method determined by the Administrative Committee.

#### **5.26.430. Compliance With Laws.**

The Administrative Committee shall have the duty to make changes in the administration of this Plan which are necessary to comply with federal or State of California laws.

#### **5.26.435. Claims Procedures.**

A. Initial Claim. Any Participant or Beneficiary who believes that he or she is entitled to receive a benefit under the Plan must file an application as provided in Section 5.26.240.

B. Appeal. If an application for benefits is denied, the Participant or Beneficiary will be advised of his or her right to appeal the denial to the Administrative Committee. The Participant or Beneficiary may appeal the denial to his or her application by filing with the Administrative Committee a written request for review of such claim stating the specific facts supporting his or her claim and specifying the remedy sought. The appeal shall be reviewed by agents of the Administrative Committee. If the agents determine that the claim is valid, benefits shall be distributed as soon as administratively feasible in accordance with the terms of the Plan. If, however, such agents recommend denial of the claim, such appeal shall be reviewed by the Administrative Committee at its next open meeting. The determination of the Administrative Committee as to the denial of a claim on appeal shall be final and binding to the extent permitted by law.



## **PART 9 FIDUCIARY RESPONSIBILITY**

### **5.26.440. Immunities.**

Except as otherwise provided by the Trust Agreement:

A. No fiduciary shall be liable for any action taken or not taken with respect to the Plan or the Trust Agreement except for his own gross negligence or willful misconduct;

B. No fiduciary shall be personally liable upon any contract, agreement or other instrument made or executed by him or on his behalf in the administration of the Plan or the Trust Agreement;

C. No fiduciary shall be liable for the neglect, omission or wrongdoing of another fiduciary nor shall any fiduciary be required to make inquiry into the propriety of any action by another fiduciary;

D. The County and each officer and Employee thereof, the Administrative Committee and each member thereof, and any other person to whom the County or Administrative Committee delegates (or the Plan or Trust Agreement assigns) any duty with respect to the Plan or the Trust Agreement, may rely and shall be fully protected in acting in good faith upon the advice of counsel, who may be counsel for the County, upon the records of the County, upon the opinion, certificate, valuation, report, recommendation, or determination of the TPA, Trustee, Investment Manager, the County Treasurer or of the County Auditor-Controller, or upon any certificate, statement or other representation made by or any information furnished by an Employee, a Participant, a Beneficiary or the Trustee concerning any fact required to be determined under any of the provisions of the Plan;

E. If any responsibility of a fiduciary is allocated to another person, then such fiduciary shall not be responsible for any act or omission of such person in carrying out such responsibility; and

F. No fiduciary shall have the duty to discharge any duty, function or responsibility which is assigned by the terms of the Plan or Trust Agreement or delegated pursuant to the provisions of Section 5.26.450 to another person.

#### **5.26.450. Fiduciary Responsibilities.**

The fiduciaries shall have only such powers, duties, responsibilities and authorities as are specified in the Plan or the Trust Agreement. The Board of Supervisors of the County shall have the authority to appoint, employ and remove the Trustee, any Investment Manager, or any other person that is employed for purposes of the Plan and to approve certain expenses charged to the Plan in accordance with Section 5.26.420. The Administrative Committee shall be the Plan Administrator and shall have the responsibility and authority to appoint or remove any Investment Manager and to interpret and administer the Plan, subject to the provisions hereof. The Trustee shall have the responsibility and authority for the administration of the Trust Agreement.

### **PART 10 MISCELLANEOUS**

#### **5.26.460. Nonalienation.**

To the extent permitted by law and except as otherwise provided in the Plan, no right or interest of any kind of a Participant or Beneficiary hereunder shall be transferable or assignable by the Participant or Beneficiary, nor shall any such right or interest be subject to alienation, anticipation, encumbrance, garnishment, attachment, execution or levy of any kind, voluntary or involuntary.

#### **5.26.465. Rights of an Alternate Payee Under a QDRO.**

A. Notwithstanding Section 5.26.460, an Alternate Payee shall have the right to make a claim for any benefits awarded to the Alternate Payee pursuant to a QDRO as provided in this section. If an Alternate Payee is awarded a specified interest in the Account of the Participant pursuant to a QDRO, such interest of the Alternate Payee shall be segregated and separately accounted for by the Trustee in the name and for the benefit of the Alternate Payee.

B. Upon receipt of a domestic relations order, or, if earlier, notice that a domestic relations order may be sought, the Administrative Committee shall suspend distributions from the Participant's Account, and shall take steps to ensure that the Participant and each Alternate Payee is aware of the order or proposed order and the suspension of distributions from the Participant's Account. Moreover, the Administrative Committee shall determine, within a reasonable period after receipt of such order, whether such order is a QDRO. If the order is determined to be a QDRO, the Alternate Payee's interest under such order shall be segregated and/or distributed in accordance with the QDRO and this Section 5.26.465. If the order is determined not to be a QDRO, and the domestic relations order is not modified as necessary to constitute a QDRO within a reasonable period of time after such determination, the suspension of distributions from the Participant's Account shall be discontinued. If an order is not received within a reasonable period of time after the County has been notified that such an order is being sought, the suspension of distributions from the Participant's Account shall be discontinued.

C. Distributions to the Alternate Payee shall be made in accordance with the QDRO provided that the QDRO does not conflict with the Plan's distribution provisions or the provisions of this section. Regardless of whether the Participant is eligible to take a distribution under the Plan, the QDRO may provide for an immediate distribution of the Alternate Payee's interest thereunder to the Alternate Payee. If a QDRO does not provide the form of distribution of benefits payable to an Alternate Payee, the Alternate

Payee shall have the right to elect distribution in any form provided under this section. Pursuant to the QDRO or the Alternate Payee's election, the Alternate Payee's interest may be distributed in cash in a lump sum payment or in equal monthly, quarterly or annual installments not extending over more than fifteen years.

D. The Alternate Payee's interest specified in the QDRO shall be segregated and/or distributed from the Participant's Account, and the Investment Funds in which such Account is invested, on a pro rata basis.

E. Following the determination that a domestic relations order is a QDRO, and segregation of an Alternate Payee's interest, the Alternate Payee shall have the right to direct the investment of his or her interest in the same manner as provided under Section 5.26.200 with respect to the Participant. The Participant shall continue to have the right to direct the investment of the portion of his or her Account that is not awarded to the Alternate Payee pursuant to the QDRO.

F. Unless the QDRO provides otherwise, an Alternate Payee shall have the right, in the same manner as a Participant, to designate a Beneficiary, who shall receive benefits payable to the Alternate Payee in the event that all of the Alternate Payee's benefits have not been distributed at the time of the Alternate Payee's death. If the Alternate Payee does not designate a Beneficiary, or if the Beneficiary predeceases the Alternate Payee, benefits payable to the Alternate Payee which have not been distributed shall be paid to the Alternate Payee's estate. Any death benefits payable under this section shall be paid in a lump sum as soon as administratively practicable after the Alternate Payee's death, with or without the Beneficiary's request.

**5.26.470. Facility of Payment.**

Whenever any Participant entitled to benefits under the Plan shall be under a legal disability or, in the sole judgment of the Administrative Committee, shall otherwise be unable to apply benefits to his own best interest and advantage, the Trustee, at the direction of the Administrative Committee, may make payments to the Participant's legal representative, and the decision of the Administrative Committee shall completely discharge the liability of the Plan, the Administrative Committee, the County and the Trustee with respect to such benefits.

**5.26.480. No Enlargement of Employment Rights.**

A Participant by accepting benefits under the Plan does not thereby agree to continue for any period in the employ of the County, and the County by adopting the Plan, making contributions or taking any action with respect to the Plan does not obligate itself to continue the employment of any Participant for any period.

**5.26.490. Severability Provision.**

If any provision of the Plan or the application thereof to any circumstance or person is invalid the remainder of the Plan and the application of such provision to other circumstances or persons shall not be affected thereby.

**5.26.493. Military Service.**

Effective on and after December 12, 1994, and notwithstanding any provisions of this Plan to the contrary, contributions, benefits and service credit with respect to "qualified military service" will be provided in accordance with Section 414(u) of the Code. "Qualified military service" means any service in the uniformed services (as defined in Chapter 43 of Title 38 of the United States Code) by any individual if such individual is entitled to reemployment rights under such chapter with respect to such service.

#### **5.26.495. Electronic Media.**

Notwithstanding any provision in this Plan to the contrary, including provisions requiring the use of a written instrument, the Administrative Committee may establish procedures for the use of electronic media in communications and transactions between the Plan or the Administrative Committee and Participants and Beneficiaries; provided, however, that any such procedures shall comply with applicable law. Electronic media may include, but are not limited to, e-mail, the Internet, intranet systems and automated, telephonic voice-response systems.

#### **5.26.497. Temporary Suspension of Plan Provisions.**

Notwithstanding any provision of the Plan to the contrary, during any conversion period (including but not limited to a change of Trustee, TPA or Investment Funds), in accordance with procedures established by the Administrative Committee, the Administrative Committee may temporarily suspend, in whole or in part, certain provisions of the Plan, which may include, but are not limited to, a Participant's right to change his contribution election, a Participant's right to change his investment election and a Participant's right to borrow or withdraw from his Account or obtain a distribution from his Account.

### **PART 11 AMENDMENT OR TERMINATION**

#### **5.26.500. Right to Amend or Terminate.**

Subject to the limitations of Section 5.26.150, the Board of Supervisors of the County has reserved, and does hereby reserve, the right at any time or times, without the consent of any Participant, Beneficiary or other person, (1) to terminate the Plan, in whole or in part or as to any designated group of Eligible Employees, Participants and their Beneficiaries, or (2) to amend the Plan, in whole or in part. Subject to the provisions of Section 5.26.120 no such termination or amendment shall decrease the amount to be contributed by the County on account of any period prior to the date such termination or amendment is approved by the Board of Supervisors of the County.

**5.26.510. Procedure For Termination or Amendment.**

Any termination or amendment of the Plan pursuant to Section 5.26.500 shall be expressed in an instrument executed by the County on the order of its Board of Supervisors and filed with the Trustee, and shall become effective as of the date designated in such instrument or, if no date is so designated, on its execution.

**5.26.520. Distribution Upon Termination Without Maintenance of a Successor Plan.**

If the Plan shall be terminated by the County, subject to the final sentence of Section 5.26.500, County Contributions shall cease, and the Investment Funds shall be distributed as if each Participant had then retired pursuant to Section 5.26.260 at the time of the termination, provided that the County does not maintain a successor plan within the meaning of Treasury Regulation Section 1.401(k)-1(d)(3).

**5.26.530. Vesting on Termination.**

Notwithstanding any other provision of the Plan, upon the termination or partial termination of the Plan or upon complete discontinuance of contributions under the Plan, the rights of all Employees to benefits accrued to the date of such termination or partial termination or discontinuance, to the extent then funded, or the amounts credited to the Employee's Account shall be fully vested and nonforfeitable.

**5.26.540. Failure to Qualify Under Sections 401(a) and 401(k) of the Code.**

Notwithstanding anything else contained herein, the Plan shall be subject to the issuance by the Internal Revenue Service of either (1) a determination or ruling to the effect that the Plan as amended and restated (and as modified by any amendment thereto made for the purpose of securing such determination or ruling) meets the applicable requirements of Sections 401(a) and 401(k) of the Code for a qualified governmental plan containing a qualified cash or deferred arrangement, or (2) a determination or ruling with respect to the Plan that is acceptable to the County. If the County does not receive such a determination or ruling within 12 months after it requests it or, if earlier, within 24 months after the Plan is amended and restated by the

County, then, notwithstanding any other provision of the Plan, the County may elect to declare the Plan to be retroactively void as of the date of the amendment and restatement by giving written notice to the Trustee that no such Internal Revenue Service determination or ruling has been received.

If, upon request by the County for a determination or ruling, the Internal Revenue Service determines that the adoption of Part 5 and the related provisions of the Plan adversely affect the Plan's qualified status, or that Termination Pay Contributions made pursuant to Payroll Deduction Authorization Agreements are not "picked up" within the meaning of Code Section 414(h)(2), then the County may declare Part 5 of the Plan void as of the date of its adoption by giving notice to the Trustee and cause the refund of Termination Pay Contributions and the earnings thereon to the Participants.

## **PART 12 ROLLOVERS**

### **5.26.610. Rollovers and Plan-to-Plan Transfers.**

#### **A. Rollovers from Other Plans.**

1. The Trustee or its authorized agent shall, at the direction of the Administrative Committee, receive and thereafter hold and administer as part of the Account for a Participant all cash and other property that constitute an Eligible Rollover Distribution if such Eligible Rollover Distribution is either (1) received in a direct trustee-to-trustee transfer, or (2) transferred by the Participant to the Trustee or its authorized agent on or before the 60th day after he received such Eligible Rollover Distribution (a "Rollover Contribution"). For purposes of this Section 5.26.610A, the Plan will accept Rollover Contributions that are made on or after January 1, 2002, from the following plans: (1) an individual retirement account under Code Section 408(a); (2) a "conduit" individual retirement account described in Code Section 408(d)(3)(A)(2); (3) an individual retirement annuity under Code Section 408(b); (4) an annuity plan described in Code Section 403(a); (5) a defined contribution plan which is qualified under Code Section 401(a); (6) an annuity contract under Code Section 403(b); and (7) an eligible deferred compensation plan under Code Section 457(b) which is maintained by a state,



political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. The Plan will accept an Eligible Rollover Distribution on or after January 1, 2002 which includes a distribution of after-tax employee contributions, provided the Rollover Contribution is made in a direct trustee-to-trustee transfer. The Plan will accept an Eligible Rollover Distribution on or after January 1, 2002 that is attributable to the Participant's status as a surviving spouse.

2. The Administrative Committee may take any action and may require the Participant to provide any information or documentation necessary to permit the Administrative Committee to satisfy any obligation imposed on the Administrative Committee by the Code and the regulations thereunder to make a reasonable determination that the Eligible Rollover Distribution satisfies the requirements of the Code and the terms of the Plan. The Committee may instruct the Trustee or its authorized agent not to accept the contribution if it does not satisfy such requirements or if it would otherwise jeopardize the qualified status of the Plan.

3. An Eligible Rollover Distribution received by the Plan shall be held in the Participant's Rollover Contributions Account (which shall include one or more record-keeping subaccounts for purposes of separately accounting for Rollover Contributions from an eligible deferred compensation plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and the nontaxable portion of a Rollover Contributions that include after-tax contributions) and invested in accordance with the Participant's instructions in accordance with Section 5.26.200.

**B. Rollovers From the Plan.**

1. A Participant who is entitled to receive an Eligible Rollover Distribution from the Plan, may direct the Administrative Committee to have the distribution transferred in a lump sum directly to the trustee of one of the following "eligible retirement plans": (a) an individual retirement account under Code Section 408(a); (b)

an individual retirement annuity under Code Section 408(b); (c) an annuity plan described in Code Section 403(a); or (d) a plan which is qualified under Code Section 401(a) and permits the acceptance of rollover contributions. Effective for any distributions made on or after January 1, 2002, the term "eligible retirement plan" also shall include: (y) an annuity contract under Code Section 403(b), and (z) an eligible deferred compensation plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from the Plan.

2. In order for a transfer to be made with respect to a Participant under this section, (a) the Participant must designate in writing the eligible retirement plan to receive the transferred amounts; (b) the Participant must timely provide the Administrative Committee with adequate information to enable the Administrative Committee to determine that the transferee plan is an eligible retirement plan described above; (c) the entire amount to be transferred must be an Eligible Rollover Distribution; and (d) the Participant must have received proper notice in accordance with Code Section 402(f).

3. For distributions made on or after January 1, 2002, a portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of After-Tax Contributions. However, such portion may be transferred only (a) to an individual retirement account under Code Section 408(a) or an individual retirement annuity under Code Section 408(b), or (b) in a direct trustee-to-trustee transfer to an annuity plan described in Code Section 403(a) or a defined contribution plan which is qualified under Code Section 401(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

4. For distributions made after December 31, 1992, a Participant's surviving spouse who becomes eligible to receive a distribution on the Participant's death under Section 5.26.270 of the Plan or an Alternate Payee who is a Participant's spouse or former spouse who becomes eligible to receive a distribution under Section 5.26.465 of the Plan shall be treated as the Participant for purposes of this section, except that the term "eligible retirement plan" shall not include an annuity plan described in Code Section 403(a) or a defined contribution plan which is qualified under Code Section 401(a). For distributions made on or after January 1, 2002, a Participant's surviving spouse who becomes eligible to receive a distribution on the Participant's death under Section 5.26.270 of the Plan or an Alternate Payee who is a Participant's spouse or former spouse who becomes eligible to receive a distribution under Section 5.26.465 of the Plan shall be treated as the Participant for purposes of this section.

C. Transfers Between County 401(k) Plans.

1. Transfers to this Plan from the County Deferred Earnings Plan. A Participant who is qualified to make Tax Deferred Contributions to this Plan may elect to transfer to this Plan his membership and the balance in his accounts under the County Deferred Earnings Plan, provided that:

a. Investments in the Participant's "Account" (as defined in the County Deferred Earnings Plan) — other than any investment in the "Participant Loan Fund" (as defined in the County Deferred Earnings Plan) — under the County Deferred Earnings Plan shall be liquidated and then the cash shall be transferred to this Plan within a commercially reasonable period of time, unless the Administrative Committee otherwise makes arrangements for an in-kind transfer of assets. As soon as practicable following the transfer, the transferred cash shall be invested in the same Investment Funds (or a similar Investment Fund if the identical fund is not an available investment alternative) from which those amounts were liquidated and in the same proportions as they were invested under the County Deferred Earnings Plan;

b. Any balance owing and obligations of a County Deferred Earnings Plan loan shall become the balance owing and obligations due to this Plan; and

c. Vesting credit and benefit distribution rights accrued in the County Deferred Earnings Plan shall be transferred to this Plan.

2. Transfers from this Plan to the County Deferred Earnings Plan. A Participant who is qualified to make Tax Deferred Contributions (as defined in the County Deferred Earnings Plan) to the County Deferred Earnings Plan may elect to transfer to the County Deferred Earnings Plan his membership and the balance in his accounts under this Plan, provided that:

a. Investments in the Participant's Account — other than any investment in the Participant Loan Fund — under this Plan shall be liquidated and then the cash shall be transferred to the County Deferred Earnings Plan within a commercially reasonable period of time, unless the Administrative Committee otherwise makes arrangements for the in-kind transfer of assets. As soon as practicable following the transfer, the transferred cash shall be invested in the same Investment Funds (as defined in the County Deferred Earnings Plan) — or a similar Investment Fund (if the identical fund is not an available investment alternative) from which those amounts were liquidated and in the same proportions as they were invested under this Plan;

b. Any balance owing and obligations of a loan under this Plan shall become the balance owing and obligations due to the County Deferred Earnings Plan; and

c. Vesting credit and benefit distribution rights accrued in this Plan shall be transferred to the County Deferred Earnings Plan.

3. Transfers from this Plan to a Successor 401(k) Plan. The Account of a Participant who is eligible to participate in (a) a qualified defined contribution plan including a qualified cash or deferred arrangement maintained by an entity determined by the Internal Revenue Service to be a successor employer to the County, or (b) a qualified defined contribution plan including a cash or deferred arrangement that is determined by the Internal Revenue Service to be a successor plan to this Plan such that it is treated as adopted before May 7, 1986 by a state or local government, its political subdivision, or its agency or instrumentality, (referred to herein as a "Successor CODA Plan"), shall be liquidated and transferred to the Successor CODA Plan in accordance with the procedures implemented by the Administrative Committee; provided that:

a. Any balance owing and obligations of a loan under this Plan shall become the balance owing and obligations due to the Successor CODA Plan, which shall assume the Participant's note; and

b. Vesting credit and benefit distribution rights accrued in this Plan shall be transferred to the Successor CODA Plan.

## **PART 13 EGTRRA SUNSET**

### **5.26.700. EGTRRA Sunset Provisions.**

The changes made to this Plan in accordance with the terms of the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"), shall expire and no longer be effective upon the sunset of the applicable provisions of EGTRRA. The sections of the Plan that will no longer be effective (in whole or in part) upon the sunset of applicable EGTRRA provisions include: 5.26.020.17 (last sentence); 5.26.035B (Code Section 401(a)(17) limits); 5.26.060B (Catch-Up Contributions authorized); 5.26.100B, C, E; 5.26.160B (Code Section 415 limits); 5.26.300D(3) (suspension period for Tax Deferred and After-Tax Contributions in the event of a Hardship Withdrawal); 5.26.330; 5.26.610 (Rollover provisions) and such other provisions that the Administrative Committee determines are no longer applicable due to the sunset of relevant EGTRRA provisions. Upon the sunset of the EGTRRA provisions, and notwithstanding anything in the Plan to the contrary, the Plan shall be construed in accordance with the terms of the Plan in effect as of December 31, 2001, except to the extent such terms are inconsistent with the applicable provisions of the Code and guidance issued thereunder, in which case, the Plan will be construed consistent with such applicable law.